

~~2:15-cv-01045-RFB-PAL~~

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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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CUNG LE, et al.,

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Plaintiffs,

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Case No. 2:15-cv-01045-RFB-PAL

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vs.

)

Las Vegas, Nevada

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ZUFFA, LLC, d/b/a Ultimate
Fighting Championship and

)

Wednesday, August 28, 2019

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UFC,

)

EVIDENTIARY HEARING, DAY THREE

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Defendants.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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THE HONORABLE RICHARD F. BOULWARE, II,
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

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COURT REPORTER:

Patricia L. Ganci, RMR, CRR

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United States District Court

333 Las Vegas Boulevard South, Room 1334

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Las Vegas, Nevada 89101

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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6 | ALSO PRESENT:

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— — ○ ○ — —

THE COURT: Please be seated.

And, Dr. Topel, you recognize you're still under oath?

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1 THE WITNESS: I do.

2 THE COURT: Thank you.

3 MR. CRAMER: Your Honor, I just have one preliminary
4 matter to bring up before we start the cross, if you don't mind.

5 THE COURT: Uh-hmm.

6 MR. CRAMER: Last night Zuffa was busy. And they filed
7 with the Court the output of two brand new regressions and
8 sought leave to file still more brand new regressions.

9 THE COURT: Well, I'm not saying I'm going to accept
10 those regressions, so that's a separate issue.

11 MR. CRAMER: Okay.

12 THE COURT: I'm going to ask Mr. Isaacson why I should
13 do that at this point in time because I don't know that they
14 should.

15 So, Mr. Isaacson, why don't you answer that question
16 for me. Given the fact this hearing was planned well in
17 advance, I'm a little concerned about last-minute things that
18 could have easily been anticipated. I don't really understand
19 why these regressions weren't previously filed. And, so, I
20 don't know why I should accept them.

21 MR. ISAACSON: So, we did this last night so that they
22 would have the opportunity to see them before the testimony
23 today because we didn't want that to be an issue. And we
24 recognize that they were not put in the reports previously.
25 They were in direct response -- each one of them were the

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1 subject of a colloquy with the Court, and what we suggested was
2 a two-page supplemental expert report with these. They are
3 simple adjustments to current regressions so that if the Court
4 wants answers as to the data questions that were being
5 discussed, it would have those answers.

6 THE COURT: Okay.

7 MR. ISAACSON: The purpose of the two-page report is
8 not to have -- because it's two pages, is not to have any
9 additional expert argument or otherwise. And in one of them,
10 you know, is a reply to -- and this -- we had this discussion at
11 the very beginning of Dr. Singer's direct when he was raising a
12 regression that we never -- was in his last report that we never
13 had a response -- never had a chance to respond to, and the
14 Court indicated that it would -- it was -- you know, it would be
15 interested in having us respond to things we hadn't had a chance
16 to respond to.

17 So, there's -- the large majority of our letter was
18 just giving you stuff in the report that you had asked about and
19 then these three sets of regressions that could be done in a
20 two-page report, and we've outlined what they are. And I think
21 we gave notice as to what these are last night so they would
22 have the opportunity to have it. I suggest the plaintiffs be
23 given a chance to respond, and then the Court can consider what
24 it wants to do.

25 THE COURT: Well, I'm sorry. And, so, just -- so, your

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1 view is that these regressions are a response to what particular
2 inquiry? I just want to make sure that --

3 MR. ISAACSON: All of that is outlined in the letter.
4 So --

5 THE COURT: Well -- okay. Well, let me just be -- let
6 me go back and ask the specific question because -- hold on.

7 (Pause.)

8 THE COURT: So it's just the one quote that -- one
9 quote as it relates to the particular colloquy that I had.

10 MR. ISAACSON: Right, with the -- with only one of the
11 three sets of regressions --

12 THE COURT: Right.

13 MR. ISAACSON: -- if I'm understanding what you're
14 saying.

15 THE COURT: Right. Those are sort of responses to
16 general areas of conversation that were discussed.

17 MR. ISAACSON: Yes.

18 THE COURT: Okay. So what I will say right now is,
19 presumptively, I'm not going to accept them unless I think
20 they're directly -- they were referenced or included in the
21 reports. If, however, I think that they're significant enough
22 that would warrant my consideration of them, then I would let
23 the plaintiffs respond, and we would unfortunately have to come
24 back. At this point in time, I don't know that that would be
25 appropriate.

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1 I think, in my review of these -- that's why I asked
2 you these questions -- these are things that could have easily
3 been anticipated and should have been anticipated as relates to
4 the questioning. So, I'm not going to let Dr. Topel talk about
5 them, and I'm not going to include them at this point in time
6 because I don't think that they -- again, in my review of them
7 when you filed them and then just -- and hearing you talk about
8 them again today and looking again at the results, I don't see
9 how these were unanticipated areas of inquiry.

10 MR. ISAACSON: So, to be clear, with only -- with
11 respect to only one set of those regressions, it's a response to
12 something they did in their last report to which we were not
13 permitted to respond to.

14 THE COURT: So -- okay. So, here's --

15 MR. ISAACSON: That's what -- that's what we have as
16 Professor Topel's second proposed new regression.

17 THE COURT: So, do you have the letter in front of you?

18 MR. ISAACSON: Yes.

19 THE COURT: So I just want to be clear about what it
20 is --

21 MR. ISAACSON: At page --

22 THE COURT: -- that we're talking about so we're not --
23 so, let's just go through it very quickly together.

24 So the first report, it talks about citations requested
25 by the court.

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1 MR. ISAACSON: Right. Every -- the
2 relevant discussion --

3 THE COURT: Hold on. Hold on just a second. And I
4 want to make sure I'm understanding what's new and what's not
5 new and what's a citation.

6 MR. ISAACSON: So, what's new is page 3 of the letter.

7 THE COURT: Right. Okay. So, that's what I thought.
8 I just wanted to make sure we're all on the same page.

9 So these other parts are just citations to the record?

10 MR. ISAACSON: Correct.

11 THE COURT: And you would agree with that, Mr. Cramer?
12 That the earlier part of the letter are just citations to the
13 record?

14 MR. CRAMER: I think that's correct, Your Honor, though
15 I haven't -- this came in while I was preparing the rebuttal and
16 it came in, I think, at 10 o'clock last night. I haven't had a
17 chance to study it. I looked at --

18 (Court reporter admonishment.)

19 MR. CRAMER: Oh, I apologize.

20 I haven't had a chance to study it.

21 THE COURT: I'm not asking you to concede that you
22 agree that the citations are accurate --

23 MR. CRAMER: Okay.

24 THE COURT: -- but you agree that the letter is not
25 purporting to add new regressions in the first three pages?

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1 MR. CRAMER: I -- I --

2 MR. ISAACSON: First two pages.

3 THE COURT: First two pages, excuse me.

4 MR. CRAMER: I believe that what the first two pages
5 are doing is providing citations to the record. We don't know
6 if they're accurate or not.

7 THE COURT: Okay. That's fine.

8 MR. CRAMER: That's correct, Your Honor.

9 THE COURT: So, let me understand specifically,
10 Mr. Isaacson, the issue of the new regressions and why they were
11 provided now rather than earlier. Because certainly you've had
12 Dr. Singer's last report before, and you could have asked me to
13 do this on the first day. And, so, I'm just a little confused
14 about why I would accept them now.

15 And I say that in part because Dr. Topel has certainly
16 gone through and offered critiques along the lines, at least
17 what I understand, this is saying. So -- and, quite honestly,
18 this doesn't actually some of the larger concerns that I have
19 about the differences in the model, but explain to me why this
20 wouldn't have been provided earlier.

21 MR. ISAACSON: So, I'm only now speaking of the second
22 proposed new regression.

23 THE COURT: Okay. And that -- just so we're clear,
24 that would be?

25 MR. ISAACSON: That would be the -- that would be a

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1 response to the regression he put in his last report.

2 MR. CRAMER: And, Your Honor, just so we're clear, that
3 last report that Mr. Isaacson is referring to was served in May
4 of 2018. Okay? And the first time --

5 THE COURT: Okay.

6 MR. ISAACSON: Let me -- let me -- let me --

7 THE COURT: So we got the date, but let me let
8 Mr. Isaacson respond.

9 MR. ISAACSON: And we have objected to that regression
10 being included in this hearing, and we did so -- and we did so
11 in response to their interrogatory -- to interrogatory responses
12 that included it, and when it was raised at the hearing, we
13 objected to it. We thought it was improper for this -- and it
14 was inconsistent with, you remember, we were discussing the
15 joint motion that was submitted that said there would be no new
16 regressions in that last report.

17 THE COURT: Right.

18 MR. ISAACSON: So we made the objection and then we
19 had --

20 THE COURT: Well, that's not my concern, Mr. Isaacson.

21 MR. ISAACSON: Well, I'm just giving you the record of
22 what's happening.

23 THE COURT: Before the hearing I should have been told
24 about this. It shouldn't come in the midst of that. I
25 appreciate that you objected. But, now, in the midst -- in the

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1 middle of Dr. Topel's testimony and after Dr. Singer's done
2 rebuttal -- I mean, has actually testified the first time, I'm
3 getting these regressions, notwithstanding that. So what
4 happens is it delays, potentially, the hearing.

5 I'm not saying that there might not have been a reason
6 to do it. What I'm saying is that the reason to do it existed
7 before the hearing started and doing it now delays the hearing.

8 And, so, my reason for rejecting it wouldn't be that
9 you wouldn't potentially have something to respond to; it would
10 be, one, this is late. We have this hearing. It should have
11 come before so that we would -- they would be able to respond.
12 I would be able to look at it. We're in the middle, almost
13 towards the end of their testimony, and now getting this
14 hearing -- these regression offerings late. I should have had
15 them previously.

16 And that's my question. I don't know why they weren't
17 offered or given before, unless I'm -- they were attached to
18 something.

19 MR. ISAACSON: Attached to something. So, I...

20 The colloquy that we had, Your Honor, when we made the
21 objection, was that the prejudice -- if there was any prejudice
22 to us, it could be cured by giving us the opportunity to respond
23 to it.

24 THE COURT: Right. But he did respond to it.

25 MR. ISAACSON: No. No. He has not. He has not.

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1 THE COURT: Ah, I don't know -- perhaps you weren't
2 listening to my questions yesterday.

3 MR. ISAACSON: No. With this.

4 THE COURT: But my questions were exactly around what
5 these new regressions are about, right? So, I'm trying to
6 understand -- that's exactly what we spent time on yesterday,
7 which is part of the reason why I understand that these
8 regressions to be offered, but how did he not talk about what's
9 in the new regression?

10 MR. ISAACSON: I should have been -- should be more
11 specific.

12 THE COURT: Okay.

13 MR. ISAACSON: He did not respond with the additional
14 regression material that's reflected here in the letter.

15 THE COURT: Ah.

16 MR. ISAACSON: Okay.

17 THE COURT: So what you're saying is he responded, but
18 he didn't -- he wasn't able to offer new --

19 MR. ISAACSON: Right.

20 THE COURT: -- regressions.

21 MR. ISAACSON: Correct. And I would actually be
22 surprised if anybody needed to be called back about these. I
23 think we've debated back and forth just as to how these things
24 would be done.

25 But if we're not permitted to supplement, I think our

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1 original objection stands, and the Court should consider
2 whether -- in violation of the joint motion, what happened in
3 this -- that this -- whether what happened in this last report
4 should be considered.

5 THE COURT: So, two things. One is, it seems to me, in
6 looking at these regressions, these are similar to the criticism
7 that Dr. Topel raised about Dr. Singer's modelling.

8 Now, I haven't had a chance to go through them
9 extensively to review them, and I wasn't sure what you intended
10 to do with them because we're not even actually at redirect. So
11 I'm not really sure what -- how they would get introduced
12 exactly at this point.

13 But, that being said, I don't know that they're going
14 to be necessarily helpful given the fact that Dr. Topel has
15 actually been fairly, I think, clear about what his concerns
16 were and what the issues are.

17 So, why don't we do this: For now, we'll see how the
18 cross goes. I'll look at these regressions again, because I
19 didn't have a chance to go through them, really, to be able to
20 sort of get a good sense of what I think they can add to the
21 conversation or not. And I'm not sure what they add, honestly,
22 Mr. Isaacson, to what Dr. Topel's already said.

23 So, I'm not sure that they add -- and I will say, quite
24 honestly, if you have two statisticians who are running
25 regressions and they come up with different results, that, to

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1 me, is not a basis to reject it at the motion for class
2 certification. So there would have to be a reason, right, that
3 I would say that this -- even if that's true, we'd have to still
4 argue why it is, again, that I would not allow for the class to
5 be certified, if that was the issue.

6 So, that's the separate issue, which is that even,
7 let's say, that the regressions are run differently and
8 statisticians can run reactions and come up with different
9 results, that doesn't necessarily mean that I wouldn't certified
10 the class. So, I think the question we'll have to ask is
11 whether or not, in the context of this procedure -- procedural
12 posture, whether or not even adding the regressions is
13 necessary. But what I'm going to do is this. We'll let
14 Dr. Topel finish his cross. Then what I'll do is we'll take a
15 break. I'll look at the regressions after that, and then I'll
16 figure out whether or not and how I'm going to address them.

17 But we'll see. I understand your position,
18 Mr. Isaacson, that you think that they're responsive. You
19 didn't have a chance to respond, and this is your attempt to do
20 that where the Court had indicated that you were going to have
21 some latitude to be able to respond.

22 So, what I want to do is figure out whether or not what
23 he said is actually going to be helpful as relates to this
24 elaboration, and then we'll see what we're going to do after
25 that.

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1 MR. ISAACSON: All right. Thank you, Your Honor.

2 THE COURT: Uh-hmm.

3 MR. CRAMER: Thank you, Your Honor.

4 All right. If you give me one moment --

5 THE COURT: Sure.

6 MR. CRAMER: -- I'm going to set up my papers here.

7 Thank you, Your Honor.

8

9 CROSS-EXAMINATION OF ROBERT TOPEL, Ph.D.

10 BY MR. CRAMER:

11 Q. Dr. Topel, do you have the book entitled "Robert Topel
12 Hearing" in front of you?

13 A. Yes.

14 Q. Those were given to you by your counsel. You may want to
15 refer to them at some points.

16 A. Okay.

17 Q. It has your reports and your deposition. I don't know if
18 you'll need to.

19 Can I just check to see if the ELMO is working?

20 THE COURT: One quick question. Dr. Topel, you ran
21 these regressions late last night?

22 THE WITNESS: Well, my staff did.

23 THE COURT: Your staff did.

24 THE WITNESS: Yeah.

25 THE COURT: You're familiar with them?

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1 THE WITNESS: Yeah.

2 THE COURT: Are they regressed on absolute wages or on
3 wage share?

4 THE WITNESS: Those are on wage share.

5 THE COURT: Okay. I'm sorry, on Dr. Singer's wage
6 share?

7 THE WITNESS: Yeah.

8 THE COURT: Okay. So they're not -- because the
9 earlier -- the other equation we had was on absolute --

10 THE WITNESS: Different thing.

11 THE COURT: -- context.

12 THE WITNESS: Different thing. We weren't doing that
13 last night.

14 THE COURT: Okay. So this is just -- this is just the
15 share -- this is your -- your company's regression on the wage
16 share and removing certain -- or adjusting certain variables in
17 the context of the new regression and that would be the weights.
18 Is that right?

19 THE WITNESS: Well, you -- yeah, you -- you and I had a
20 long exchange about year fixed effects and how something that
21 doesn't vary within a year couldn't show up in the regression.
22 So, I demonstrated that for you by taking out the year effects
23 and putting the thing that has the advertising variable that's
24 constant within a year to show you what happened.

25 THE COURT: Okay.

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1 All right. Thank you.

2 Go ahead, Mr. Cramer.

3 MR. CRAMER: And, Your Honor, you understand that --
4 with those new regressions, I haven't had a chance to review,
5 but they're all entirely new. I mean, Dr. Topel said he didn't
6 recall whether he had run them.

7 THE COURT: Well, they're not -- there's no dispute
8 about them being new.

9 MR. CRAMER: Okay. Fair enough.

10 THE COURT: So we can leave --

11 MR. CRAMER: We can move on.

12 THE COURT: Yeah, we go move on from there.

13 BY MR. CRAMER:

14 Q. Good morning, Dr. Topel. How are you?

15 A. Good morning.

16 Q. Good to see you again.

17 MR. CRAMER: All right. So, Your Honor, what I'm going
18 to try to do is be relatively brief. I thought what I could to
19 be most helpful is try to elicit some of the things where I
20 think both sides have some agreements on, some foundational
21 agreements on, so then that we with bring Dr. Singer up to rebut
22 some of the specific points that Dr. Topel and Zuffa have made
23 in the course of the hearing. So that's what I'm going to try
24 to do. I hope I'm going to be helpful.

25 BY MR. CRAMER:

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1 Q. So, Dr. Topel, you agree that some fighters are more
2 important to an MMA promotion than other fighters, correct?

3 A. Yes.

4 Q. Okay. And you would also agree that not all MMA fighters
5 are exact substitutes for each other. Is that fair?

6 A. Yes.

7 Q. And you would also agree that some MMA fighters generate
8 more revenues when they fight than other MMA fighters. Is that
9 fair?

10 A. Yes. I think you've asked the same question three times,
11 but go ahead.

12 Q. Okay. And those fighters capable of generating more
13 revenues when they fight, all things equal, are more valuable to
14 their promotion than other fighters. Is that fair?

15 A. Yes.

16 Q. Okay. And, generally speaking, audiences and consumers and
17 fans are drawn to fights featuring highly ranked opponents,
18 right?

19 A. Yes.

20 Q. And all things equal, fans and consumers are willing to pay
21 more to see highly ranked fighters compete against each other as
22 opposed to lower ranked fighters. Is that fair?

23 A. Yes.

24 Q. So all things equal, higher ranked fighters, on average,
25 generate more revenues when they fight than lower ranked

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1 fighters. Is that fair?

2 **A.** That's probably true on average, yes.

3 **Q.** Okay. Now, assume with me --

4 **A.** I don't think we've done -- anybody here has done a study of
5 that, but it certainly makes sense.

6 **Q.** Okay. Now, assume with me for this question that when the
7 Strikeforce fighters you talked about yesterday moved from
8 Strikeforce to the UFC in 2011, when the UFC took over
9 Strikeforce, they, in general, and on average, began to fight
10 against a pool of higher ranked fighters. Is that a fair
11 assumption? Are you willing to stick with me?

12 **A.** Well, I don't know if they did or not, but they moved. And
13 why don't we assume that it could be true.

14 **Q.** Okay. So, if that is true, that when the Strikeforce
15 fighters moved from Strikeforce, they were generally fighting
16 against lower ranked fighters, to UFC they were generally
17 fighting, on average, against higher ranked fighters, would you
18 agree that the newly-arrived Strikeforce fighters in that
19 assumption would be expected to generate more revenues when they
20 fight because of the better pool of fighters they could now
21 compete against? Is that fair?

22 **A.** Well, you've described a situation where there's a
23 complementarity where -- and I think we even talk about this in
24 my report. There's a complementarity between the qualities of
25 fighters, and part of what Zuffa's business model has been is to

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1 put the best people together. So, another way of saying that is
2 that in an efficient market these complements will -- what an
3 efficient market does is it assigns resources, here fighters, to
4 their most highly valued use. And these fighters who were once
5 at Strikeforce are more valuable now that they've moved over
6 to -- over to Zuffa. That's part of the business model.

7 Q. In other words -- thank you. That's fair.

8 Is another way of saying that that when you have a
9 better pool of fighters fight against each other, there are a
10 network effects that improve their value?

11 A. That could be.

12 Q. Okay. So, is it also fair to say, when these new
13 Strikeforce fighters are now fighting at the UFC and generating
14 more revenues, their marginal revenue product goes up? Is that
15 right?

16 A. That can be true, too.

17 Q. So it's possible then that the new wages at the UFC, for
18 these Strikeforce fighters, after they moved to the UFC, could
19 be higher, but still below their marginal revenue product? Is
20 that fair?

21 A. Well, they could have been below marginal revenue product
22 when they left and when they came. But, you know, if Zuffa had
23 monopsony power over these people, they don't -- they wouldn't
24 have to pay them more than they were getting at Strikeforce.

25 Q. Okay. That's not the question I asked, though. The

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1 question I asked is, if the MRP, marginal revenue product, of
2 the fighters when they moved from Strikeforce to the UFC goes
3 up, and compensation also goes up, in order to know whether or
4 not the wage is competitive at the UFC, you'd have to know
5 whether the Strikeforce fighters are being paid above or below
6 their marginal revenue product. Is that fair?

7 **A.** No. I'm sorry.

8 THE COURT: You'd have to know whether or not they're
9 above or below the competitive wage what they should be getting,
10 right?

11 THE WITNESS: Well, what -- the question we were
12 asking -- remember --

13 THE COURT: No. Here's the question. The question is,
14 if they come over --

15 THE WITNESS: Yeah.

16 THE COURT: -- and they get paid more --

17 THE WITNESS: Yeah.

18 THE COURT: -- you wouldn't know whether or not that is
19 a based upon an exercise of monopsony power unless you knew what
20 the actual competitive wage was, correct?

21 THE WITNESS: Correct.

22 Let me clarify. When we made the transition from --
23 remember what plaintiffs are claiming, that the -- the
24 acquisition of Strikeforce increased the monopsony power of
25 Zuffa. So we were looking -- we're looking at a world where

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1 people moved from a place that had -- a situation where
2 monopsony power increased, but people moved over, yet their
3 wages went up. And I'd make an even stronger comment about
4 that.

5 THE COURT: Okay. Mr. -- Dr. Topel, I don't want to
6 have the same discussion we had yesterday because we had this
7 fundamental disagreement, which I have to say, I found a little
8 concerning, where I kept asking you, right, and we had this back
9 and forth, right, you can have a situation where wages go up,
10 but there's still an exercise of monopsony power because the
11 wages don't go up to the competitive level. That's true, right?

12 THE WITNESS: That's true, and --

13 THE COURT: Okay.

14 THE WITNESS: -- and everything I'm saying is
15 consistent with that.

16 THE COURT: Okay. All right.

17 THE WITNESS: Because we're talking about a
18 situation -- you could have wages below marginal revenue
19 product, whatever you want.

20 THE COURT: Right.

21 THE WITNESS: Okay? But then you've got an increase in
22 the power to do that. And wages didn't go down. They didn't
23 stay the same. They went up in the transition from these two
24 places.

25 Now, Dr. Singer's testified yesterday. I was -- it

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1 was --

2 THE COURT: So, but are you assuming that if a company
3 has monopsony power it exercises in an absolute, right, sort of
4 zero tolerance way? Because your argument would be that if I
5 had increased monopsony power, I would exercise at maximum,
6 which I don't have to necessarily do, right? I mean, you're
7 correct that potentially if they had an increase in monopsony
8 power, they might not have had to pay individuals more, but the
9 fact they paid them more, even if it's a small amount more,
10 doesn't mean that they still weren't exercising monopsony power,
11 correct?

12 THE WITNESS: That's what I'm saying, that the
13 degree -- monopsony power creates a wedge between marginal
14 revenue product and a person's compensation.

15 THE COURT: Right.

16 THE WITNESS: All right? The degree of monopsony power
17 affects the size of that wedge.

18 THE COURT: Right.

19 THE WITNESS: Okay. So, what we're seeing is people
20 coming over and there's no evidence that the wedge is getting
21 bigger, particularly for the people moving over.

22 THE COURT: So where do you set the wedge? Let's
23 assume for the moment that -- okay. They're getting paid more.
24 But for you, where is that wedge? Where is the amount that
25 tells you that they were actually -- what they should have been

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1 paid based upon what was the competitive market? Because you're
2 saying that the wedge should get either bigger, if there's an
3 exercise of monopsony power, but the question is, where is this
4 top line for you as it relates to the competitive wage?

5 In sort of your analysis, did you test to see what
6 would have been the competitive wage for these fighters, right,
7 if there were not monopsony power or if there were more
8 competitive promoters in the market?

9 THE WITNESS: Well --

10 THE COURT: What was the way that you independently
11 tested that?

12 THE WITNESS: I'm going to -- I'm going to explain
13 it -- what we just did in the context of Dr. Singer's testimony
14 and because --

15 THE COURT: But I actually asked you -- I actually
16 would like you to answer my question, which is --

17 THE WITNESS: And I promise I'm going to answer your
18 question.

19 THE COURT: Okay. All right.

20 THE WITNESS: Because remember what Dr. Singer said
21 yesterday, he tested whether foreclosure share had an impact on
22 compensation at Strikeforce, and he rejected the idea that it
23 did. And so he acted as if they were not foreclosed and
24 Strikeforce is now a benchmark.

25 Now, there's two points there. One is the econometric

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1 point about the regressions we've been talking about. And that
2 is, over at Strikeforce there's no mechanical relationship
3 between the revenue weights and the denominator of the wage
4 share. So that's saying that -- that tells me that that bias
5 may be important in the Zuffa data, but now there's an economic
6 point, and this comes to what you just asked.

7 The economic point is if they -- if they're not
8 affected by the foreclosure of -- if Strikeforce is not affected
9 by the foreclosure of Zuffa, and that's what his tests said, and
10 he's using it as a benchmark, then it satisfies -- I'm not
11 saying I would go there, but this is the implication of
12 plaintiffs' theory -- they satisfy the benchmark place, the
13 place that's operating independently of --

14 THE COURT: So you're saying that the Strikeforce
15 preacquisition would be the benchmark, but they were paying the
16 greater percentage of event revenue. So if you were to use that
17 same benchmark, right, why wouldn't you use it for Zuffa?
18 Because -- right? Preacquisition, Strikeforce is paying a
19 larger wage share than Zuffa.

20 THE WITNESS: Your Honor --

21 THE COURT: Well, okay, but please answer -- answer my
22 question.

23 THE WITNESS: They're paying a larger wage share --

24 THE COURT: So -- so --

25 THE WITNESS: -- of lower wages.

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1 THE COURT: Okay. But -- okay. So, you're saying that
2 even if they're paying a larger wage share, they're paying lower
3 absolute wages. And, so, therefore, they were essentially --
4 they are the model that you can use to show what the competitive
5 wage would be.

6 THE WITNESS: I'm saying that's what the plaintiffs'
7 theory implies because they're saying that -- that Strikeforce
8 is not being affected by the foreclosure share. Compensation of
9 Strikeforce is not being affected.

10 THE COURT: Well --

11 THE WITNESS: Now, let me finish. Think -- think about
12 this wage share business. Because now I've got somebody
13 fighting for Zuffa. And, yeah, they've got a higher wage share
14 over at Strikeforce. Now, that's because of the denominator,
15 revenue. And, so, I -- somebody had -- wanted to make an offer
16 to somebody at Zuffa. You say, we'll give you a percentage --
17 higher percentage of revenue. I don't want a higher percentage
18 of revenue; I want a higher compensation.

19 So the metric is compensation, not what I'm going to
20 pay you as a share of my revenue. My -- my wage share is
21 higher, but my wage is lower. Guys don't want that. They want
22 the wage. And that's the point.

23 THE COURT: So, I guess that I'm confused. What would
24 you say is the proper benchmark for determining the appropriate
25 competitive wage for these fighters?

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1 THE WITNESS: I'm saying that by this test --

2 THE COURT: I'm not talking about the test. I'm asking
3 you, based upon your own analysis and research, what -- where in
4 your research does it point to, what would be, and is, the
5 appropriate competitive wage measure?

6 THE WITNESS: All I can tell you, Your Honor, is
7 there's no evidence that what we see is not the competitive
8 wage. And -- and I can't point to -- other than taking the
9 benchmark that's offered by the plaintiffs and saying, okay,
10 let's use that.

11 THE COURT: So you're saying that -- you don't
12 necessarily come up with that, but you didn't feel that was your
13 role; your role was to figure whether or not they had properly
14 set it, right?

15 THE WITNESS: Who is "they" had properly set it?

16 THE COURT: The plaintiffs' expert had properly set
17 the -- the appropriate measure for the competitive wage. So
18 that's why you disagree with this idea about wage share and
19 foreclosure share, right?

20 THE WITNESS: I think what people care about is their
21 compensation.

22 THE COURT: Well, obviously. No one's disputing that.
23 The question is what's the appropriate measure. And if I
24 understand your testimony just now, what you're saying is that
25 if you even use the plaintiffs' model, that using sort of the

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1 Strikeforce preacquisition of absolute compensation and wage
2 share ratio, that that would be the measure that could be used
3 based upon the model for the appropriate competitive wage. And
4 if you look at that, there's no evidence that there was an
5 exercise of monopsony power when the fighters came over?

6 THE WITNESS: I would say -- or before they left. I
7 would say -- I would change one thing in what you said. You
8 said "and the wage share." I'm saying the compensation,
9 according to this, is a benchmark. The level of compensation
10 that Strikeforce is being offered as a benchmark. That's the
11 benchmark world. It's separate from -- it's not affected by
12 the -- by this test. It's not affected by the compensation by
13 the foreclosure share over at -- over at Zuffa. So let's
14 compare.

15 THE COURT: So you're saying the fact that -- that
16 Zuffa had a dominant position with respect to Strikeforce in the
17 market regarding the fighters wouldn't have impacted the
18 competitive ability of Strikeforce as relates to what wage they
19 could offer, so -- right? Because what you're saying is that --

20 THE WITNESS: That's --

21 THE COURT: So they still -- they still would have, in
22 terms of what they're offering, they're still offering a
23 competitive wage unrelated to Zuffa's dominant position as
24 relates to fighter services?

25 THE WITNESS: They're offering a competitive -- a

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1 competitive wage which, according to this test, their
2 compensation was not affected by the -- by the fighters' share
3 or -- excuse me -- the foreclosure share of Zuffa.

4 THE COURT: Okay. Now I understand your argument. I
5 got it now. Okay. Thank you.

6 Go ahead.

7 BY MR. CRAMER:

8 Q. Let me just follow-up for one minute to take us -- take you
9 back to, I think, part of the colloquy with His Honor and some
10 of the questions that I asked.

11 So you agreed with me that when fighters -- if we
12 assume that fighters' MRP goes up when they move from
13 Strikeforce to UFC, you would expect them to be paid more in a
14 competitive market, correct?

15 A. In a competitive market.

16 Q. Okay. So let's -- let's say when the Strikeforce fighters
17 moved -- and you also, I think, testified that you --

18 A. Hold on. Hold on. In a completely competitive market, if
19 Strikeforce is in that market, there wouldn't have ...

20 Wages are being set competitively. You're saying
21 Strikeforce is out of that market. I'm not, but --

22 Q. I'm not sure I understand what you said, but let me move on.

23 So, I believe you testified that -- in response to His
24 Honor's question, that the way we determine a competitive wage
25 is we look at the wedge between the wage level and the marginal

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1 revenue product. Is that right?

2 **A.** Well, if I knew the size of the wedge.

3 **Q.** Right. Whatever that size is?

4 **A.** If there -- if there is a wedge.

5 **Q.** If is a wedge.

6 **A.** And there is a wedge.

7 **Q.** Okay. So let's assume that when the Strikeforce fighters as
8 a group moved from Strikeforce to the UFC their marginal revenue
9 product doubled because of the network effects we talked about
10 earlier. Okay?

11 **A.** Okay. Because of the combination of athletes that Zuffa
12 has -- has put together.

13 **Q.** Right. Has locked up into these exclusive contracts,
14 correct.

15 **A.** Okay. Which makes -- which makes productivity better when
16 you put people to Zuffa.

17 **Q.** Right. And Zuffa has locked them into these contracts, the
18 critical mass of them as we've argued. All right. So, let's
19 say --

20 **A.** I'm not -- I'm not arguing -- agreeing with the last half,
21 but the first half is just fine. Let's keep doing that.

22 **Q.** Okay. So, let's say their marginal revenue product doubles.
23 But you also see their compensation level go up, but it only
24 goes up 10 percent. So, now, the wedge between wage level and
25 marginal revenue product has grown, right?

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1 **A.** On an individual basis -- you -- you've made the assumption.
2 I don't know. So you're making up some number, and in a
3 competitive labor market everybody's compensation would have
4 been affect.

5 **Q.** If you accept my --

6 **A.** I mean, in a -- whether it's monopsonistic or competitive,
7 everybody's labor market would have -- compensation would have
8 been affected.

9 **Q.** Dr. Topel, if you accept my assumption that wages did not
10 grow as fast as MRP, okay? That was the assumption of the
11 question. When the Strikeforce fighters moved from Strikeforce
12 to the UFC, that would mean that the UFC is exercising monopsony
13 power, correct?

14 **A.** I didn't deny in this premise that they were -- they were
15 not exercising some degree of monopsony power. I'm saying that
16 that degree of monopsony power increased according to your
17 theory.

18 **Q.** Okay. But the fact -- then the fact that the wages went
19 up -- wage level went up when Strikeforce fighters moved to the
20 UFC is not necessarily an indication that the UFC was paying a
21 competitive wage, right?

22 **A.** They may not have been paying a competitively -- competitive
23 wage beforehand, afterward, but they didn't have to raise the
24 wages of these people. I mean, think about --

25 THE COURT: Okay. Okay. But that's -- again, that's

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1 not the question. The question is even if -- but I think you've
2 already answered because I asked you the same question
3 yesterday, I think, which is -- and you've agreed with it, which
4 is that you can a situation in which the absolute wages go up,
5 but there's still an exercise of monopsony power because the
6 difference between what the increased wage is and what the
7 competitive wage is could still be substantial enough that there
8 would be an exercise of monopsony power. You agreed with that.
9 You just said that you're not -- you don't agree that the
10 plaintiffs' model shows that, right?

11 THE WITNESS: Doesn't show that, and it doesn't
12 indicate the effects of an increase in monopsony power.

13 THE COURT: Right. But I'm saying, you don't disagree
14 with the premise that you can have a situation in which wages
15 absolutely increase, but nonetheless, the increased wage can
16 still be a representation of monopsony power if it is not
17 increased to what would be the competitive wage.

18 THE WITNESS: Wages could be rising, but they could be
19 rising at a level below the competitive level.

20 THE COURT: Okay. I'm -- I'm going to try to ask this
21 one more time, and maybe I'm not being clear.

22 Monopsony power can allow for a situation in which the
23 wage is increased absolutely, but they don't increase to the
24 competitive wage because of the exercise of monopsony power,
25 correct?

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1 THE WITNESS: I agree with that.

2 THE COURT: Okay. That's all -- I think that's all. I
3 understand that you have other explanations as to why they
4 may -- may or may not have increased in this circumstance, why a
5 company may be able to exercise monopsony power and keep the
6 wages flat. So, I'm not saying that those aren't other
7 arguments that you've made. I just wanted to clarify that you
8 do agree with that principle, which I think that you have
9 confirmed.

10 So why don't we go ahead, Mr. Cramer.

11 MR. CRAMER: Yes. Thank you, Your Honor.

12 BY MR. CRAMER:

13 Q. His Honor raised this question of benchmarks. And, so, I
14 wanted to show His Honor and Dr. Topel paragraph 287 from
15 Dr. Topel's report.

16 So this is paragraph 287, and it says, "There are three
17 natural candidates for a competitive benchmark: The
18 compensation paid by other MMA promoters, which corresponds to
19 the Bellator benchmark used by Dr. Singer; the compensation paid
20 by Zuffa when it had a smaller share of the MMA market, which
21 corresponds to the lower foreclosure share used by Dr. Singer in
22 his regression benchmarks; and the compensation paid to
23 Strikeforce athletes who were then incorporated into UFC
24 following the 2011 acquisition, which corresponds to
25 Dr. Singer's Strikeforce benchmark."

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1 Did you write that?

2 **A.** I wrote that.

3 **Q.** And your view is that these are natural competitive
4 benchmarks, but wage levels should be used, correct?

5 **A.** Well, in the context of what Dr. -- Dr. Singer said that
6 Strikeforce was a benchmark. So I'm saying let -- okay. That's
7 a natural thing then. Let's use Strikeforce.

8 **Q.** Right. So your view is let's use Strikeforce wage level,
9 and Dr. Singer's view is let's use these natural competitive
10 benchmarks, the ones you've identified, right here, agreeing
11 with Dr. Singer, but he says you should use wage share. That's
12 the difference between the two of you, correct?

13 **A.** He wants to use wage share, and the measure of whether wages
14 are being suppressed would be -- if those are the benchmarks and
15 that means I can look at them for a competitive outcome is,
16 what's happened to wages?

17 **Q.** But you agree they're natural competitive benchmarks, right?

18 **A.** No. I said that Dr. Singer said they're natural benchmarks.
19 And, okay, naturally, I'm going to use them. So he says so, I'm
20 going to look. That's what it says.

21 THE COURT: Well, no. Are you saying -- because it
22 looks like it says there are three natural candidates for a
23 competitive benchmark. That's your statement, right?

24 THE WITNESS: I understand, but I'm doing this in the
25 context of the -- of what Dr. Singer's offered us up to this

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1 point, which is that it's a benchmark. So I'm going to look.

2 THE COURT: Yes. Do you disagree that they're natural
3 benchmarks?

4 THE WITNESS: Yeah.

5 THE COURT: Well, what would be the natural benchmarks
6 that you would offer or that you did offer in your reports?

7 THE WITNESS: The only thing I can do is take what he
8 offered as a natural benchmark and say what happens. If I
9 had --

10 THE COURT: Well -- so, if you wanted to offer your own
11 natural benchmark, what would it be?

12 THE WITNESS: Okay. You've asked me this before so
13 I'll try to give an example, and it will demonstrate to you
14 why --

15 THE COURT: But I'm saying -- so, in other words, you
16 didn't do that in your report, but you're saying -- in this case
17 you're saying you just simply -- in this paragraph you simply
18 just accepted his benchmarks and that's why you made the
19 statement "there are three natural candidates for a competitive
20 benchmark"? That's you accepting Dr. Singer's --

21 THE WITNESS: That's -- that's -- I'm accepting it. So
22 let me give you an example of --

23 THE COURT: Because it doesn't actually say that,
24 right? It doesn't say --

25 THE WITNESS: Well, it's in the context.

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1 THE COURT: All right. Okay.

2 THE WITNESS: Okay. Remember what you asked me
3 yesterday, because I said, if I could think of one, I would have
4 done it for you, one that I like. I mean, suppose that we had
5 two MMA markets, one east of the Rockies, one west of the
6 Rockies, and there's no mobility between them. And the one over
7 east of the Rockies is alleged to have -- since we're west of
8 the Rockies, I'll say the one west of the Rockies is alleged to
9 have some foreclosure going on, but it's not happening east of
10 the Rockies. Well, then I could look at the level of
11 compensation -- the level of compensation -- over east of the
12 Rockies and say that's the competitive level, I'm going to
13 compare it to west of the Rockies.

14 THE COURT: Okay. But let me stop you for just a
15 second because I appreciate you're trying to come up with one,
16 but the question I have to deal with is this, right? You said
17 you couldn't think of one, right? And you're saying you don't
18 necessarily agree with them, but there has to be -- there has to
19 be some attempt to come up with that. What's unreasonable about
20 using these?

21 If you can't come up with one on your own, because
22 obviously it's a challenge, why would it be unreasonable to use
23 these three? They may not be perfect, but what else could you
24 use that would be available? That's why I'm asking you that
25 because --

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1 THE WITNESS: Well --

2 THE COURT: -- I have to find out, or I have to decide
3 whether or not they're unreasonable. Is there anything
4 unreasonable about them in the absence of other alternatives?

5 THE WITNESS: Well, if they're in the same market, they
6 should be affected by the same market forces include --
7 including foreclosure and the like. But Dr. Singer's offering
8 them as a benchmark. So he's saying, in effect -- I don't want
9 to put words in his mouth -- they are east of the Rockies. And
10 Zuffa is over here west of the Rockies. And, so, we're going to
11 compare east of the Rockies to west of the Rockies. He wants
12 to -- he wants to use the wage share. I've said there's no
13 competitive information about that wage share -- no market
14 information about that wage share that would tell you that this
15 is a monopsony outcome. That's all I'm saying.

16 THE COURT: Right. But what I'm saying is that in the
17 context of the analysis that you all have done and I have to
18 decide, we can't just sort of throw up our arms and say, well,
19 we can't come up with something, so there can't be a reasonable
20 attempt to do it.

21 If you had to do this and you were -- and you,
22 yourself, had to do it, right, and weren't just simply saying
23 those aren't reasonable, what would you use? Given what's here
24 and you had to do the analysis that Dr. Singer did, what would
25 you use?

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1 THE WITNESS: I would have said what I said here. We
2 have no reliable evidence.

3 THE COURT: Yes, but that's not the question. The
4 question is, if you had to try to come up with the best
5 benchmarks available based upon what existed, what would you
6 use?

7 THE WITNESS: We don't have best benchmarks. That's
8 the nature of the problem that I face.

9 THE COURT: Right. But I understand that. But as you
10 know, as an economist, this is not an uncommon problem. Moving
11 into new markets, there are oftentimes situations in which you
12 have to use what you think are the best comparable or analogous
13 circumstances to help you predict certain information.

14 THE WITNESS: Your Honor --

15 THE COURT: And, so, part of the issue is, if you're
16 going to say to me, right, that these aren't reasonable methods,
17 the question is, what would be a reasonable alternative to what
18 was used?

19 THE WITNESS: Your Honor, I've written lots of research
20 papers, many of which start out and don't go anywhere. And why
21 don't they go anywhere? Because we can't gather the evidence to
22 reflect conclusively on the problem being solved. So I'm coming
23 to you and you're saying, well, what would you have done? And I
24 start a project and say, look it, we can't get the evidence that
25 would distinguish between this and that, well, then, we can't.

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1 And that -- and that's -- so I -- so you --

2 THE COURT: So you're saying in this context, there
3 would be no way to actually come up with --

4 THE WITNESS: Yes. You asked me --

5 THE COURT: -- an appropriate benchmark to assess the
6 competitive wage?

7 THE WITNESS: You asked me yesterday, have you got a
8 competitive -- have you got a benchmark that you would recommend
9 and advocate. I said no. Because I haven't been able to -- I
10 told you, if I had thought of one, I would have told you.

11 THE COURT: Right.

12 THE WITNESS: Now, the best I could do is, I said,
13 look, plaintiffs are saying monopsony power increased upon these
14 acquisitions, or monopsony power increased over time. So we
15 could compare -- we could compare the wage levels at Zuffa back
16 before their alleged foreclosure share went up, business
17 practices before -- that's a common way of doing it. That's a
18 benchmark -- or we can look at what happened when this putative
19 monopsony power increased. And that was my comparison of the
20 wages, either the levels if you want or the changes of people
21 at -- at Strikeforce.

22 THE COURT: So one way then would be to look at what
23 happened to changes in wage levels and you could disagree about
24 the wage measure after people moved over?

25 THE WITNESS: Yes, or you could look at the levels of

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1 wages --

2 THE COURT: Okay.

3 THE WITNESS: -- at those places --

4 THE COURT: Right.

5 THE WITNESS: -- if that was a competitive benchmark.

6 THE COURT: Right. So -- but you're saying that might
7 be one mechanism for doing it? And, again, I'm asking you this,
8 Dr. Topel, and I'm pushing you a little bit because, obviously,
9 I have to look at this and try to figure out, based upon the
10 information in this record, what is a reasonable approach and
11 whether or not the plaintiffs have taken that in the context of
12 the model. And that's why I'm asking you that as an expert in
13 the field if you were required to do what Dr. Singer had to do,
14 which is to try to assess that, what you would have done. And I
15 think what you said is you don't know that there would be an
16 easy way to do this given the absence of other exactly
17 comparable markets, right?

18 THE WITNESS: Let me put this in the context of what my
19 assignment is -- was. And that is two things. I'll interpret
20 it as two things. Have plaintiffs given a reliable method for
21 ascertaining the existence and effects of monopsony power? No.

22 Do I have a reliable method in this market for
23 ascertaining the impact of monopsony -- of isolating any
24 monopsony power if it exists? Don't have it.

25 THE COURT: So you're saying, effectively, there would

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1 be no way to actually ascertain whether or not there was an
2 exercise of monopsony power in this context?

3 THE WITNESS: I've given you the ones that will --
4 within the context of plaintiffs' claims, that monopsony power
5 increased. Well, that is inconsistent with their -- the
6 evidence is inconsistent with their theory.

7 I've talked about things -- business practices used by
8 smaller firms that have no alleged market power. That's
9 consistent with the business practices we'd be -- we observed
10 not having anticompetitive impact or having procompetitive
11 reasons. Those are the things I can offer you, but I can't
12 offer you, and I -- you know, I wish I could, but I can't offer
13 you some market somewhere that is unaffected by the alleged
14 practices that I can say, there it is. That's the wage level
15 that ought to be paid. We're just bringing it over here and
16 saying that's the harm.

17 THE COURT: Okay. I appreciate that.

18 THE WITNESS: Okay.

19 THE COURT: Thank you.

20 Go ahead, Mr. Cramer.

21 BY MR. CRAMER:

22 Q. I was interested in your analogy about two MMA organizations
23 assuming two geographic markets, east of the Rockies and west of
24 the Rockies. Is that what you brought up?

25 A. Yes.

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1 Q. Okay. And you said you would compare the wage levels of the
2 two to see -- to check to see whether the wage being paid was
3 competitive. Is that right?

4 A. Yeah.

5 Q. Okay. So let's assume that the MMA outfit west of the
6 Rockies -- because L.A. is there and everybody likes
7 California -- they have all of the headliners, all of them, no
8 headliners on the east of the Rockies. East of the Rockies they
9 have everybody -- no headliners at all. Okay? So you've got
10 the east of the Rockies, no headliners, minor leagues
11 effectively.

12 A. Then it's not a benchmark.

13 Q. Oh, it's not a benchmark. Okay. So, not a bench -- you
14 can't use then the wage level -- the wage level of an MMA
15 organization that has much lower ranked fighters to compare to
16 the -- to -- as a benchmark for the wage level --

17 A. But we're looking -- we're looking --

18 Q. Let me finish -- of an MMA promotion that has much higher
19 ranked fighters? You can't do that for wage level, right?

20 A. We're not looking at the -- I wasn't proposing -- my
21 assumption was these two places were the same so they had the
22 same distribution of fighters and everything, okay? That's why
23 we looked at people who moved from Strikeforce to -- to --

24 Q. Right. So --

25 A. -- UFC.

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1 Q. -- in comparing the two different organizations, you'd have
2 to control for a rank, for example, correct?

3 A. You'd have to control for a lot of things in the world you
4 described.

5 Q. You'd have to control for revenues, wouldn't you?

6 Let's say the west, because they had all of the top
7 fighters, they were bringing in a billion dollars a year, but
8 the east, they were bringing in a million dollar a year. You'd
9 have to control for that in comparing the wage levels of the
10 two, correct?

11 A. You might have to -- since I haven't done the study, you
12 might have to control for how much -- well, you know, how rich
13 people are and how much they're willing to pay.

14 Q. Okay. Let's turn to wage share. You said in your report
15 that worker pay as a percentage of revenue is not a measure of
16 anything useful or informative. Were those your words?

17 A. Yes, and let me be careful about what we're talking about.
18 If I just take the pay of a worker and divide it by the revenue
19 of the -- the -- here, the show; in the restaurant business, the
20 restaurant; the wage of an individual worker divided by the
21 revenue of a firm is not a very useful benchmark. Let me give
22 you an example.

23 In the restaurant business, Chick-fil-A. Chick-fil-A
24 has average annual revenues of, I don't know, 4.5 million per
25 outlet. Subway has average revenues per outlet of about

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1 \$500,000. Dividing the wage, say, \$20,000 a year of a
2 particular individual by the revenues of Chick-fil-A and then
3 comparing them to the -- the same \$20,000 for the same type of
4 worker to the revenues over at Subway, which are, what is that,
5 a ninth of what they are at Chick-fil-A, that is not an
6 informative thing.

7 Q. Right. You can't use wage share when the worker -- you
8 can't draw a direct connection between the worker and the
9 revenues, right?

10 A. Well, let me --

11 THE COURT: You mean the worker's fungible.

12 BY MR. CRAMER:

13 Q. The workers are fungible --

14 A. Workers are fungible.

15 Q. When -- for example, Chick-fil-A, the product isn't the
16 person, the fry cook. The product -- bless you -- the product
17 isn't --

18 A. You're focusing on something that I --

19 THE COURT: Well, Mr. Cramer --

20 MR. CRAMER: Okay. I'll --

21 THE COURT: I don't think you need to focus on this.

22 MR. CRAMER: That's fine.

23 All right. I just wanted to ask Dr. Topel about an
24 article that he wrote. Let me put it up on the ELMO.

25 BY MR. CRAMER:

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1 Q. This is an article entitled "The Economics of Team -- NFL
2 Team Ownership" by Professors Kevin Murphy and Robert Topel.

3 Is that Robert Topel you?

4 **A.** That one is me.

5 Q. And you wrote this paper with Professor Murphy?

6 **A.** Yes, we did.

7 Q. Okay. All right. I'd like to turn to page 1 of the
8 article. Page 1, the first sentence says: "Our firm has been
9 asked by the NFL Players Association, (NFLPA), to examine the
10 NFL owners' claim that they cannot continue to operate
11 economically under the current salary cap/free agency system."

12 Do you see that?

13 **A.** Yes, I do.

14 Q. And you and Professor Murphy did that evaluation for the NFL
15 Players Association?

16 **A.** Yes, we did.

17 Q. Okay. All right. This is page 2 of your article. And the
18 fourth bullet down, which I've highlighted, says, quote, The
19 percentage of total revenues paid to players in the years
20 following the 2006 CBA extension is lower than the average
21 percentage paid to players since the NFL and the players entered
22 into the current salary cap/free agency system in 1993. Recent
23 increases merely reverse a downward trend that began in 1999.

24 Do you see that?

25 **A.** I see that.

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1 Q. So one of the points you're making here is that the NFL
2 player wage share, after 2006 -- after the 2006 CBA, is lower
3 than it was, on average, in the post 1993-period, correct?

4 A. That's what the sentence says. Are we connecting this to
5 my -- to the previous question?

6 Q. I'm just asking what the sentence says. You're tracking
7 wage share?

8 A. I'm fine with reading it.

9 Q. Okay.

10 (Court reporter admonishment.)

11 THE WITNESS: We can both read. It's --

12 THE COURT: Are you -- oh, I'm sorry. You're saying
13 you're fine with that?

14 THE WITNESS: I am.

15 THE COURT: You agree that that's what --

16 THE WITNESS: That's what I said.

17 THE COURT: Yes.

18 THE WITNESS: That's what I said, and I'd stand by it.

19 THE COURT: Right. Okay.

20 BY MR. CRAMER:

21 Q. Right. And in short, you found -- you and Professor Murphy
22 found that NFL player wage share in the NFL went up from 1993 to
23 '99, began to fall in 1999, and then began to rise again in
24 2006. Is that right?

25 A. That's right.

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1 Q. All right. I'd like to show you figure 12 from this
2 article.

3 This is figure 12 from your article, right?

4 **A.** That's right.

5 Q. This figure is titled "National Football League Total Cash
6 Player Cost as a Percentage of Total Revenues, 1994 to 2007,"
7 right?

8 **A.** I can't read it from here, but I'll take your word to it.

9 Q. Okay.

10 THE COURT: Actually, if you look on the screen right
11 there, Dr. Topel --

12 THE WITNESS: Okay. I got it.

13 BY MR. CRAMER:

14 Q. And in figure 12, you chart total player cost as a
15 percentage of total revenues, right?

16 **A.** That's right.

17 Q. So in this chart, you're comparing player wage shares over
18 time, right?

19 **A.** Yes, and I come back to my question, are we trying to
20 connect this --

21 THE COURT: Well, hold on. Let him -- let him do the
22 background.

23 THE WITNESS: Okay. He can -- I guess this is going to
24 play out to some ultimate question. So, yes, you're -- that's
25 what we're doing.

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1 BY MR. CRAMER:

2 Q. Let me also ask you. So, we see the wage share bouncing
3 around a lot -- the NFL player wage share bouncing around a lot
4 from 1994 to 2007. It's fair to say that the NFL revenues were
5 going up during this period?

6 **A.** I don't -- this is written God knows how long ago. I don't
7 remember.

8 Q. You don't know whether NFL revenues were going up from 1994
9 to 2000 --

10 **A.** I suspect they were, but I don't remember.

11 THE COURT: Well, I think they're -- it actually says
12 it in the previous slide that you put up.

13 MR. CRAMER: Thank you, Your Honor.

14 THE COURT: The paragraph above.

15 MR. CRAMER: Yeah.

16 BY MR. CRAMER:

17 Q. So if you just charted -- if you -- so -- so -- okay. So
18 you just know -- you know the revenues were going up?

19 **A.** Yeah.

20 Q. Okay.

21 **A.** I mean, one of the key points here was that -- putting aside
22 the share business, we can come back to this -- is that the
23 owners were moaning that they're not making any money. And even
24 if they were losing money on a cash flow basis, they were buying
25 their franchises for 500 million and selling them for 1.5

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1 billion. So it's like buying the Monet that you have a huge
2 capital gain on and complaining about the insurance premium you
3 had to pay every year to have it hanging on the wall. You have
4 to cap -- you have to count the capital gains on the asset when
5 you're talking about the returns to ownership.

6 Q. Dr. Topel, you found, and Professor Murphy found, wage share
7 useful and informative for your analysis in this paper, correct?

8 A. Yes. Wage share -- I mean, the compensation share is part
9 of the -- is part of the collective bargaining agreement.

10 And, you know, when I sold my company years ago now,
11 the -- the potential buyers all wanted to know what compensation
12 is a share of revenue. That's not the same as the wage of a
13 worker divided by revenue. But even then, is it informative
14 about monopsony power? No.

15 Q. Okay. That's all I wanted to ask you about that.

16 A. Okay.

17 Q. Put it aside.

18 A. I mean, as a matter of fact, I teach labor share of national
19 income in my class and how it can go up or down.

20 Q. You teach wage share in your class?

21 A. I teach labor share of national income in my class and how
22 increase -- and then one of the key points is an increase or
23 decrease in labor share doesn't mean that labor is better off or
24 worries off.

25 Q. Okay.

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1 THE COURT: But it can mean that, though. It's not as
2 if wage share is absolutely going to in every circumstance be
3 unrelated to the use of monopsony power, correct?

4 THE WITNESS: Well, I wasn't even making a comment
5 about monopsony power.

6 THE COURT: No. But what I'm saying is that you're not
7 saying -- let me just clarify this.

8 I understand you to be saying that the wage share alone
9 doesn't necessarily reflect monopsony power in terms of the
10 differences, but you're not saying that wage share can't be
11 useful in some circumstances in talking about it, are you?

12 THE WITNESS: If I could find a way to measure at the
13 aggregate level, say -- here's effect. At the aggregate level,
14 in economy as a whole, the share of labor in national income --

15 THE COURT: No. But let -- but let's go back to the
16 for example. Even in the NFL context of the article you wrote,
17 are you saying that the wage share as it relates to event --
18 sort of the revenues is not a useful -- at least one useful
19 metric to look at as it relates to monopsony power?

20 THE WITNESS: Well, we weren't doing anything about
21 monopsony power.

22 THE COURT: I'm not saying that. I'm not saying. But
23 I'm saying, are you saying that wage share can never be a useful
24 metric to look at in the context of monopsony power? Or are you
25 saying in this case you don't think it reflects that, which is

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1 two different things?

2 THE WITNESS: You asked -- so you asked a very broad
3 question there. So let's come back to the -- I think we talked
4 about this yesterday, but if we didn't -- if we did, forgive me.
5 If we didn't, here we go.

6 You talked about the reserve clause yesterday and how
7 the reserve clause in baseball was eliminated. We knew that
8 that was a reduction in monopsony power. Those guys -- the
9 owners used to own the contracts and then the -- the court came
10 along and, who was it, Lou Brock, I can't remember,
11 Andy Messersmith --

12 MR. CRAMER: Curt Flood.

13 THE WITNESS: Curt Flood. Yeah. Right. Thank you.

14 You know, right. We're probably about the same age and
15 we remember the same baseball player, you know, Bob Gibson,
16 but -- so the reserve clause went away. That's a clear example
17 of where a transfer of wealth occurred. And you would say,
18 well, you know, revenues of the teams were probably not affected
19 very much by this -- by this change immediately, so let's look
20 at their wage share. And people have looked at the share of --
21 of the total take, if you will, in baseball when that went away.
22 That's a completely different experiment because now you've --
23 you know that this thing has gone away and both compensation
24 went up and the share of revenues went up. I'm with you on
25 that.

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1 THE COURT: So, I guess -- no. I guess what I was
2 saying is you had made this broad statement, which I think
3 probably is sort of unfair to sort of focus on, about how wage
4 share, I think, is never useful and can't tell you anything.
5 And I think what you meant by that is in the context of this
6 case, not in all cases, but in the context of this case --

7 THE WITNESS: I meant --

8 THE COURT: -- the wage share is not necessarily
9 indicative of monopsony power one way or the other.

10 THE WITNESS: Yeah. I meant two things. I was
11 referring to the wage of an individual divided by the revenues
12 of the enterprise, and I was referring to what you're referring
13 to.

14 THE COURT: Okay. All right. That's helpful.

15 Go ahead, Mr. Isaacson [sic]. Thank you, Dr. Topel.

16 BY MR. CRAMER:

17 Q. I just noticed the sentence underneath the chart on figure
18 12 in your study. You can look, Dr. Topel, at your screen. It
19 says, "Considering the changes in the players' overall
20 percentage" -- meaning wage share over time -- "it appears that
21 the players' percentage did not keep pace with the growth in NFL
22 revenues after 2000."

23 Do you see that?

24 A. Yes.

25 Q. So you thought it was useful to compare whether the actual

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1 wage level kept pace with rev growth and revenues, right?

2 **A.** Yes, because the -- the -- the owners were saying that it
3 more than kept pace.

4 **Q.** Okay.

5 **A.** They were losing money.

6 **Q.** Let's --

7 **A.** And let me draw the contrast here because I think you showed
8 us charts yesterday where the wage share was generally flat.

9 **Q.** Let's -- excuse me.

10 Let's talk about this issue that you just raised
11 regarding the reserve clause, but before we do that, I just want
12 to show you something from paragraph 200 in your report.

13 **A.** Uh-hmm.

14 **Q.** This sentence, the one that I've highlighted in paragraph
15 200 of your report reads, "In particular, the restrictions on
16 athlete mobility address potential market failures due to
17 transaction costs and the free-rider problem."

18 Do you see that?

19 **A.** Yes.

20 **Q.** And that's your opinion, right?

21 **A.** Yes.

22 **Q.** And the restrictions on athlete mobility in this sentence,
23 you're referring to the provisions in the UFC fighter contracts
24 that we've been discussing in this hearing, correct?

25 **A.** Yes.

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1 Q. Okay. And so you would agree that those provisions restrict
2 athlete mobility, correct?

3 A. All contracts restrict.

4 Q. Okay. All right. Let's ...

5 I think you just mentioned you're aware of published
6 academic articles that use wage share to assess the compensation
7 of Major League Baseball players before and after the
8 elimination of the reserve clause in baseball, correct?

9 A. I have some familiarity with that.

10 Q. Okay. I'd like to show you Tab -- I'm sorry. It's not a
11 tab. It's paragraph 201 of your second report.

12 So I've highlighted a section I want to draw your
13 attention to. It says, "In his regression assessing common
14 impact" -- that's not what I wanted to show you. I apologize.

15 Take two. This is paragraph 22 from your second
16 report. We'll get to the other one in a minute.

17 All right. I've highlighted a sentence there in your
18 report. It says, "This is because a known change in monopsony
19 power, such as eliminating the reserve clause in baseball, has
20 clear implications for compensation: All else equal, a
21 reduction in monopsony power will increase wages."

22 Did you write that?

23 A. Yes.

24 Q. Okay. Let me just ask you some quick clarifying questions
25 about that.

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1 You would agree that the reserve clause was a provision
2 in Major League Baseball contracts that restricted the ability
3 of players to move from team to team, right?

4 **A.** Not only restricted it, you could only move under the
5 reserve clause if the team itself sold your contract to somebody
6 else.

7 **Q.** And you would agree that the elimination of the reserve
8 clause in baseball is an example of a -- what you called a known
9 change in monopsony power on the part of baseball teams,
10 correct?

11 **A.** That's what I said.

12 **Q.** And your opinion is that eliminating the reserve clause and
13 thereby enhancing the ability of athletes to sell their services
14 to competing teams reduced the monopsony power of Major League
15 Baseball teams, right?

16 **A.** All else equal, yes.

17 **Q.** And you would agree, would you not, the reduction of Major
18 League Baseball teams' monopsony power has implications for
19 athlete compensation, right?

20 **A.** That's what the paragraph -- the sentence says.

21 **Q.** And you would agree, all else equal, that when mobility of
22 athletes is enhanced, such as by the re- -- elimination of the
23 receive clause, all else equal, teams have less monopsony power,
24 correct?

25 **A.** Yes. When the -- when the property rights they had in their

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1 baseball talents were transferred from the teams to them, that's
2 what happened.

3 Q. And when sports outfits have less monopsony power, all else
4 equal, athletes get paid more, right?

5 A. Yeah. And the all else equal there is key. So, if we go
6 back to the paragraph you had put up before, all else wasn't
7 equal, but keep going.

8 Q. All right. You would also agree with me that it would not
9 be procompetitive for Zuffa to require -- and I believe you told
10 me this at your deposition, but I just want to make sure it's
11 clear. It would not be procompetitive for Zuffa to require, as
12 a condition of fighting for Zuffa, to execute contracts that
13 stipulate that that the fighter could never fight for another
14 promotion? That's not procompetitive, you would agree?

15 A. Well, I haven't examined it in detail, but I don't think
16 it's procompetitive.

17 Q. And the reason for that, you gave me at your deposition, and
18 just tell me if you can confirm that today, is that it would
19 allow -- in that instance, Zuffa locked up fighters in
20 perpetuity -- that would allow Zuffa to capture all of the
21 returns on the fighters' investments and their own human
22 capital. Isn't that right?

23 A. Yeah, I mean -- I don't think they could even legally write
24 those contracts these days.

25 Q. Right. They'd be illegal. You can't sign up anyone in

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1 perpetuity, right?

2 **A.** Right. It's one of those amendments.

3 **Q.** It's like slavery. I think it's Thirteenth Amendment.

4 **A.** I know it was 13, 14 or 15, but I can't remember.

5 **Q.** Agreed.

6 All right. Let's move to a different topic. I'd like
7 to show you an excerpt from your opening report at pages 88 and
8 89, paragraph 201. And the first sentence there you say, "In
9 his regression assessing common impact, Dr. Singer only
10 considers the impact of the contractual restrictions in PAR
11 contracts that he claims extend the period of exclusivity when
12 an athlete is under contract to Zuffa."

13 Do you see that?

14 **A.** Yes.

15 **Q.** And that's your opinion, right?

16 **A.** You know, I can't -- I don't know the context. I don't
17 remember everything yet, but let's keep going. I wrote this as
18 an opinion.

19 **Q.** Well, you wrote that in your report, right?

20 **A.** Yes. I'm just trying to remember what the context.

21 **Q.** You were discussing the foreclosure impact regression and
22 you were observing that the impact and damages that flow from
23 that impact regression are picking up the foreclosure share.

24 **A.** Yeah. I think I see what I'm saying here. Keep going.

25 **Q.** But they're not directly picking up in any way the other

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1 aspect of the challenged conduct. That's what you were saying
2 here, correct?

3 **A.** Yes.

4 **Q.** Okay. So just to be clear, Dr. Singer's impact regression
5 computes impact and damages flowing from the contractual
6 restrictions in the PAR contracts, that's your view, to the
7 extent it computes them at all?

8 **A.** Well, they purport to do what's in the PAR contracts, but if
9 some part of the PAR contracts were found to be not
10 anticompetitive, I don't know how we would change -- what we
11 would do with his foreclosure share measure to take that part
12 out.

13 **Q.** Right. But if --

14 **A.** Okay. But it also doesn't take into account various other
15 accusations or allegations that plaintiffs had about, you know,
16 the product side of the market and other things.

17 **Q.** Right. So, let's say the Court were to decide that one of
18 the aspects of the conduct that plaintiffs are challenging, the
19 exclusionary restrictive contracts are anticompetitive, right,
20 then there would be no issue with Comcast, correct?

21 I withdraw the question. I'll move onto the next --

22 **A.** Are you sure you don't want me to answer that question?

23 **Q.** Yeah, I'm sure I don't want you to answer it. It's a legal
24 question. I object to my own question.

25 All right. Well, let me ask you about a document that

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1 you cited in your report. This is a WME document you cited in
2 your report. It's called Project Basquiat.

3 THE COURT: Basquiat.

4 MR. CRAMER: Basquiat. Thank you.

5 THE WITNESS: Your Honor, I wish we'd had you there --
6 I wish you had been there at a deposition because we sat for a
7 minute trying to figure out how to pronounce that.

8 BY MR. CRAMER:

9 Q. We did, and we talked about this at his deposition. It's
10 entitled "Final Posting Memo," and it's dated June 12th, 2016.

11 MR. ISAACSON: What's the exhibit number?

12 MR. CRAMER: The exhibit number is PCCX41.

13 BY MR. CRAMER:

14 Q. All right. Before I show you the page of that that I wanted
15 to ask you about, I just want to remind you, you cited this
16 document in your opening report.

17 Do you recall it?

18 THE COURT: Okay. So hold on a second, Mr. Cramer.

19 MR. CRAMER: Yeah.

20 THE COURT: Again, I have been assuming that the
21 documents you all are citing are attached to the experts
22 reports. If they are not, then you need to make sure you
23 identify what the exhibit is, and if it needs to be admitted to
24 the hearing, then it needs to be admitted to the hearing.

25 MR. CRAMER: Okay.

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1 THE COURT: Let's try to be clear about that. For the
2 most part, I think you all have been citing to things that are
3 in the reports, but I'm not sure this is, or if it's an exhibit
4 or where it is. But let's just be clear where it is so that the
5 record is clear.

6 MR. CRAMER: Okay. This, Your Honor, is -- he cited it
7 in his report, paragraphs 56, footnotes 84 and 365. And for the
8 record, it's JCCX51. So it's in the joint exhibit binder, 51.

9 THE COURT: So it's cited, but this -- the entire
10 exhibit is not --

11 MR. CRAMER: Oh, I'm sorry, that's not it. It's
12 PCCX41. I apologize.

13 THE COURT: But -- so, what you're about to show is
14 actually not in his report. It's just from the -- from the
15 document that's cited itself.

16 MR. CRAMER: Correct.

17 THE COURT: Okay.

18 MR. CRAMER: He cites the report twice. He didn't
19 attach every single document he cited.

20 THE COURT: Okay. So then we'll need to admit this as
21 an exhibit.

22 MR. CRAMER: Okay. And it's in the joint appendix,
23 so ...

24 THE COURT: Okay. So, well, what -- what exhibit
25 number do you want to give this for the hearing?

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1 MR. CRAMER: I would like it to have PCCX41, the one
2 that it has been designated and -- yeah, it has been -- oh, this
3 is in plaintiffs. It's not in the joint. I'm sorry. It's
4 PCCX41.

5 THE COURT: So just give it a -- wait. We don't do --
6 it's Plaintiff's Exhibit. PCC, all of that, we don't need.

7 MR. CRAMER: Okay.

8 THE COURT: The Plaintiff's Exhibit number will be what
9 exactly?

10 MR. CRAMER: Why don't we call it 1.

11 THE COURT: Okay.

12 MR. CRAMER: All right.

13 THE COURT: I'm sorry. Any objection, Mr. Isaacson?

14 MR. ISAACSON: No objection.

15 THE COURT: All right. So we'll admit that.

16 MR. CRAMER: That you.

17 (Plaintiff's Exhibit 1 is admitted.)

18 BY MR. CRAMER:

19 Q. All right. And I believe you testified, if you recall,
20 Dr. Topel, at your deposition, that you believed that WME, which
21 bought, Zuffa used this document in the course of evaluating
22 whether to purchase Zuffa.

23 Do you recall that?

24 **A.** Vaguely.

25 Q. I'm sorry?

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1 **A.** Vaguely.

2 **Q.** Okay. All right. I just want to show you page 11 of the
3 document, and I want to -- I just want to draw your attention to
4 the chart on the lower left-hand side of that document entitled
5 "Bouts Remaining."

6 Do you see that?

7 **A.** Yes.

8 **Q.** Okay. And that table has two columns: One entitled
9 "Ranking" and one entitled "Average Remaining Bouts."

10 Do you see that?

11 **A.** Yes.

12 **Q.** And it's fair to say that if this chart is accurate, it
13 shows that the better a fighter is ranked, the more bouts
14 remaining on that fighter's UFC contract, on average, correct?

15 **A.** Yes. I agree with that.

16 **Q.** And I believe you also agreed with me that either someone at
17 the UFC or WME, or both, thought it relevant to track this
18 statistic, correct?

19 **A.** They put it in the document.

20 **Q.** Okay. And you would also agree with me, would you not, I
21 think as you did at your deposition, that one thing that WME
22 really wanted to know, or might want to know before it invested
23 \$4 billion-plus in Zuffa, is that Zuffa had, at least its top
24 ranked fighters, under long-term exclusive contracts, correct?

25 **A.** I don't know if I agreed to exactly that language, but

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1 something like that would be valuable to WME.

2 Q. And that's because, and I believe you said at your
3 deposition, that those fighters are the human capital that are
4 going to produce revenues for the UFC in the short-term at
5 least, right?

6 A. If I -- I have some vague recollection. I think I might
7 have even had some reference to Fox televising and they want to
8 know who they're getting.

9 Q. Right. And -- and you agree that champions are more
10 valuable than the guys ranked 11 to 15, right, to an
11 organization?

12 A. Yes.

13 Q. And you agree that fighters ranked 50 or worse are still
14 less valuable, correct?

15 A. Well, they're not in this picture, but I ...

16 Q. Okay.

17 A. Take your word for it.

18 Q. Okay. Thank you.

19 A. By the way, that -- that would be true in a competitive
20 market, too.

21 MR. ISAACSON: Your Honor, there are other parts of
22 this document that WME has asked to be maintained as
23 confidential that weren't part of the examination. And, so --

24 THE COURT: So I'd ask the parties, Mr. Isaacson, then
25 to submit hopefully a jointly agreed upon based upon my

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1 rulings --

2 MR. ISAACSON: Yes.

3 THE COURT: -- exhibits can be added to the record.

4 MR. ISAACSON: Yes, that's what we would like to do.

5 THE COURT: Okay. That's fine. I agree with that
6 approach, and would direct the parties to do that.

7 Go ahead, Mr. Cramer.

8 MR. CRAMER: Thank you, Your Honor.

9 THE COURT: Mr. Cramer, I'm going to give you about
10 10 -- 10 more minutes, 15 at most. So --

11 MR. CRAMER: Okay.

12 THE COURT: -- you're going to have to move it along.

13 MR. CRAMER: I -- okay. I'm going to move it along.

14 BY MR. CRAMER:

15 Q. I'm going to show you paragraph 171 of your report. Before
16 I -- maybe I don't need to show this to you.

17 Do you recall that you describe in your report a
18 regression you ran that specified -- so that you could measure
19 changes in compensation separately for athletes with different
20 rankings?

21 **A.** No.

22 Q. All right. This is paragraph 171 of your report, and it
23 says, "You modify the regression so you can measure changes in
24 compensation separately for athletes with different rankings."

25 Do you see that?

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1 **A.** Yeah. Who -- whose compensation changes am I looking at
2 here?

3 **Q.** Fighters.

4 **A.** No, I understand, but only Zuffa fighters?

5 **Q.** Yes. No. No. This is all the fighters in the ranked
6 market.

7 **A.** Can I see Exhibit 17?

8 THE COURT: I'm sorry. Is there a question here,
9 Mr. Cramer? Because you could just cite this without
10 Dr. Topel --

11 MR. CRAMER: Okay.

12 THE COURT: -- testifying about it.

13 MR. CRAMER: All right. Let me just ask the question I
14 want to ask then.

15 BY MR. CRAMER:

16 **Q.** You agree, would you, as you told me at your deposition,
17 that -- that Zuffa fighters -- that you found that Zuffa
18 fighters in all ranking categories: 1 to 15, 16 to 30, 31 to
19 50, 51 to 100, and 100 and worse, the compensation, on average,
20 in all of those tiers moved up during the course of the study
21 period, correct?

22 **A.** I believe that's true.

23 **Q.** They all --

24 **A.** Should we look at Exhibit 17?

25 **Q.** I think that -- that's fine. They all -- they all moved in

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1 the same -- you found, and it's in the record, that all of the
2 compensation in all of the fighter tiers moved -- moved in the
3 same direction during the class period, right?

4 **A.** I have some recollection of that, yes.

5 **Q.** Okay. And in your opinion, as you told me in your
6 deposition, is that a -- the reason for that is that there was a
7 general increase in demand for fighter services that call --
8 that caused fighter pay in all of the different ranking
9 categories to move, correct?

10 **A.** I -- I'm sure I said something like that.

11 **Q.** Okay. All right. This is the last exhibit I want to show
12 you.

13 Does it all fit on this? Is there a way that I can?

14 (Conferring with courtroom administrator.)

15 **MR. CRAMER:** I am not technologically inclined. Thank
16 you.

17 **THE WITNESS:** That's perfect.

18 (Discussion held off the record.)

19 **BY MR. CRAMER:**

20 **Q.** All right. This is Exhibit 28 from your report, correct?

21 **A.** Yes.

22 **Q.** And this is your analysis of foreclosure share, or it's your
23 redone analysis of foreclosure share that you did in your
24 report, correct?

25 **A.** It's a graph of shares.

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1 Q. And it's foreclosure -- or it's shares of the ranked
2 relevant input market over time, correct?

3 A. Yes.

4 Q. Right, and it --

5 A. And let me -- if we look at it across the bottom here, it's
6 Dr. Singer's revenue weighted, and then I think we're doing --
7 yeah, no revenue weights on the others. So one's got revenue
8 weights, the other doesn't.

9 Q. So you're comparing Dr. Singer -- the green line is
10 Dr. Singer's revenue weighted foreclosure share from his impact
11 regression, correct?

12 A. Well, I can't remember if I was doing a comparison or if I
13 just put them all in the same graph, but keep going.

14 Q. Well, the green -- you would agree with me that the green
15 line is Dr. Singer's revenue weighted foreclosure share line.
16 It says, "red Singer" --

17 A. Yes.

18 Q. Okay.

19 A. Right.

20 Q. And the darkest blue line is your measure of unweighted
21 fighters ranked 1 to 15, correct?

22 A. Yes.

23 Q. Okay. And both of the lines, the green line and the
24 unweighted headliner line, start in or about 2005, close to the
25 same place. Would you agree with me?

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1 **A.** Yeah.

2 **Q.** And they end in or about 2017 in or about the same place,
3 correct?

4 **A.** Yes.

5 **Q.** So, mathematically, on average, they're moving up at the
6 same rate, correct?

7 **A.** Yes, but Dr. Singer's regression has nothing to do with
8 that.

9 **Q.** And if you look at the period for the headliner unweighted
10 between 2011 and 2012, here, there's about a 10 percent jump --
11 10 percentage point jump. Isn't that right?

12 **A.** Yeah. There was a similar jump down before. And, you know,
13 one thing that's interesting to note is that none of them --
14 none of those lines had -- and I'm just reading it off the graph
15 up there, I can see it from here -- none of those lines have
16 that surge in 2010.

17 **Q.** Well, the Strikeforce acquisition was in March 2011,
18 correct?

19 **A.** Well, but you don't see any surge in any -- within any of
20 these ranking categories associated with that. What you do see
21 is a surge in the revenue weights that Dr. Singer uses to assign
22 to those people. In fact, in the top ranked category there,
23 while the -- while his foreclosure share is skyrocketing to --
24 it's either going -- the top ranked category is either going
25 down or flat.

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1 Q. Would you agree with me that between 2010 and 2000- -- and
2 in the middle of 2014 they have grown the same amount, your
3 unweighted headliner and Dr. Singer's revenue weighted ranked
4 market?

5 **A.** You've got to -- you got to go back. Say that again.

6 Q. That --

7 THE COURT: So Mr. -- Mr. Cramer, the graphs speak for
8 themselves.

9 MR. CRAMER: Okay.

10 THE COURT: So we don't need to ask Dr. Topel to read
11 the graphs. I can read the graphs.

12 MR. CRAMER: Okay.

13 BY MR. CRAMER:

14 Q. You would agree with me that -- that fighter rankings and
15 all of the categories moved up during the -- that the shares --

16 THE COURT: Mr. Cramer --

17 MR. CRAMER: Fair enough.

18 THE COURT: I would agree with you because that's what
19 the graph says.

20 MR. CRAMER: Excellent.

21 THE COURT: Right? He's not saying the graph is --

22 MR. CRAMER: I don't need to have to point the obvious.
23 Your Honor wants me to move on. I will complete my
24 cross-examination. Thank you, Dr. Topel. Thank you, Your
25 Honor.

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1 THE COURT: Okay. Thank you, Doctor.

2 THE WITNESS: May I step down?

3 THE COURT: Yes, you may.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Why don't we take a short recess and then
7 we'll bring Dr. Singer back over. But before we do that,
8 Mr. Isaacson, and again, before we completely release Dr. Topel,
9 I'm not sure how we introduce these regressions without
10 Dr. Topel talking about them and explaining them in the context
11 of what was done. And, so, the one thing, actually, as I think
12 about it, he may need to do that even for me to understand
13 whether or not I should admit them.

14 So, unless there's an objection to that, I can just ask
15 him -- I think he did it already -- just ask him to briefly
16 explain what was done. And then I'll let you all argue about
17 whether or not it would appropriate for me to accept those
18 regressions. Any opposition to that, just bringing him back
19 briefly for that purpose?

20 MR. ISAACSON: Absolutely not, Your Honor.

21 THE COURT: Okay. Dr. Topel, I'm sorry. I need you to
22 come back up here just for a few moments.

23 And do you have, Mr. Isaacson, a copy of the
24 regressions that you can give to Dr. Topel?

25 Hold on, Dr. Topel. He needs to -- he needs to give

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1 you a copy of -- of the new regressions. And I'm just going to
2 ask you just to briefly explain them in terms of what -- what
3 was done.

4 (Defense counsel conferring with Dr. Topel.)

5 (Counsel conferring.)

6 (Witness retakes the stand.)

7 THE COURT: Okay. So, Dr. Topel, have you been
8 provided with the -- the new regressions? Dr. Topel?

9 THE WITNESS: Yes. I'm sorry.

10 THE COURT: Okay. And, Mr. Isaacson, what I'm going to
11 ask you to do, just so we're all clear, is if you could put them
12 up on the -- the ELMO just when we're talking about them -- oh,
13 you don't have your own copy because I'm going to want --

14 MR. ISAACSON: He has the only copy.

15 THE COURT: He has the only copy. Okay. That's all
16 right. Well, go ahead. Dr. Topel, if you don't mind letting
17 him use that copy. You'll be able to see it on the screen.

18 THE WITNESS: Yeah, you do that.

19 (Counsel conferring.)

20 THE COURT: That's all right. It's going to be up on
21 the ELMO anyway. So, that's fine. Because what I'm going to do
22 is I'm still going -- I'm going to mark them as -- as court
23 exhibits, not to be admitted necessarily, but just so -- for
24 clarification as to what they are. So let's start with
25 Defendant's Exhibit -- marked as Defendant's Exhibit 1.

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1 You might have to -- there you go. So this will be
2 marked as Defendant's Exhibit 1.

3 (Defendant's Exhibit 1 is marked.)

4 THE COURT: And, Dr. Topel, can you describe to me what
5 it is that was run here?

6 MR. ISAACSON: Just for, Your Honor, this corresponds
7 to the first regression on page 3 in the letter.

8 THE COURT: Okay. Thank you.

9 THE WITNESS: Yes. This is -- to preface this, when
10 Dr. Singer testified, up until now I had understood his position
11 to be that Strikeforce -- preacquisition Strikeforce had to
12 be -- had to be in. And when he presented his model, it was
13 preacquisition Strikeforce is out, but he's using his
14 weighted --

15 THE COURT: I'm sorry. So preacquisition Strikeforce
16 bouts to be used in his impact regression. Is that what
17 you're --

18 THE WITNESS: They were in his impact regressions.
19 And, for example, as I understand it, the first several reports
20 in the body of the reports the -- any runs he had that did not
21 have preacquisition Strikeforce were not in the body of the
22 reports, but they are in the backup materials somewhere.

23 THE COURT: Okay. So what this regression is, is if
24 you remove the preacquisition Strikeforce bouts during the class
25 period, right, that's what this regression is?

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1 THE WITNESS: Uh, I think it's just removed the
2 preacquisition Strikeforce bouts based on, I assume, his finding
3 that their compensation was not affected by the --

4 THE COURT: Well, okay. Well, there could -- because
5 they're using multiple regressions, I'm trying to understand
6 what you did here. So you used -- this chart is supposed to be
7 a regression on the dependent variable being wage share and all
8 that you did is remove the preacquisition Strikeforce bouts. Is
9 that right?

10 THE WITNESS: Yes. In one of his submissions
11 Dr. Singer offered this with preacquisition Strikeforce --

12 THE COURT: Well, okay. Let's not talk about what he
13 did.

14 THE WITNESS: Okay.

15 THE COURT: I am only concerned about what you did.

16 THE WITNESS: We took preacquisition Strikeforce out of
17 some regressions that Dr. Singer had submitted in a previous
18 report, and this is the result.

19 THE COURT: Which regressions are you running again?
20 Because he ran a few different regressions. So, I just want to
21 be clear. So this -- this is his wage share regression, impact
22 regression, that he ran that was referenced I guess it was on --
23 there's a chart of it on page 125 I think of his report, and all
24 you did was take out the preacquisition Strikeforce bouts.

25 THE WITNESS: I don't know if it's 125 of his report.

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1 The -- it's 10 regressions.

2 MR. ISAACSON: Your Honor, page 2 of the letter
3 explains -- is part of the background of this regression, that
4 these are called strata -- or strata regressions that have
5 been -- that are parts of the report.

6 THE COURT: Which parts of the report?

7 MR. ISAACSON: So, on page 2 of the letter --

8 THE COURT: No, I understand that.

9 MR. ISAACSON: Okay.

10 THE COURT: I'm saying --

11 MR. ISAACSON: That's where --

12 THE COURT: That's where the reference is --

13 MR. ISAACSON: So what -- it was explained in the
14 letter with citations to the reports.

15 THE COURT: Hold on. Let me -- okay. Let me go back
16 again and pull the letter up again.

17 (Pause.)

18 THE COURT: Okay.

19 MR. ISAACSON: This is the discussion of alternatives
20 to revenue weights.

21 THE COURT: Right.

22 Did you run this regression, taking out the
23 pre-Strikeforce bouts for the regression that he ran on sort of
24 the impact -- not the stratified regression, from 125. Did you
25 run that?

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1 THE WITNESS: 125?

2 THE COURT: So, I'll show you -- well, we don't have to
3 show you. Because I'm not sure -- I'm not sure why this is
4 helpful, but we'll figure that out, because I'm not sure that in
5 the context of what I looked at this is something that would
6 be -- would necessarily be dispositive one way or the other.
7 But okay. So this is in response to these stratified
8 regressions that were run.

9 MR. ISAACSON: Right. You had asked, Your Honor, if
10 Dr. Topel had done any alternative weighting, and he had done in
11 his reports an alternative weighting to revenue weighting.

12 THE COURT: Right.

13 MR. ISAACSON: And he had done these regressions where
14 he stratified the fighters into groups. And -- so, page 2 just
15 describes the sequence that went back and forth between
16 Dr. Topel and Dr. Singer on this. All -- everything on -- from
17 Dr. Topel and Dr. Singer, on page 2, is in the record and in the
18 reports.

19 THE COURT: Got it.

20 MR. ISAACSON: All right. And the -- as it concludes
21 that all that happens is in the new -- Dr. Topel just takes the
22 last regression of Dr. Singer and makes the adjustment that's
23 reflected on page 3.

24 THE COURT: Right. Okay. So, let me make sure I
25 understand this. Dr. Topel, based upon these regression

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1 findings, are you saying that for the -- for the -- for the
2 coefficients that are statistically significant, that they have
3 a positive impact on wage share? Because that's what it looks
4 like they're saying, which is kind of hard for me to understand.

5 THE WITNESS: Well, it's --

6 THE COURT: You're saying that the increased wage share
7 had a positive -- increased foreclosure share had a positive
8 impact on the wage share?

9 THE WITNESS: Let me be clear. Dr. Singer ran these
10 regressions with preacquisition Strikeforce and --

11 THE COURT: Okay. No, no, no. But I'm asking you to
12 tell me what these means, because if you look at these, right,
13 they look like they say, for wage share, as foreclosure share
14 increases, right, the wage share increases.

15 THE WITNESS: It's his regression.

16 THE COURT: No. But you -- this is your regression,
17 right?

18 THE WITNESS: I dropped preacquisition Strikeforce the
19 way he did for the model that he's used here in court.

20 THE COURT: So you're saying your report, based upon
21 his regression, would find that as wage -- as foreclosure share
22 has a positive relationship to wage share, because that's an
23 interesting finding.

24 THE WITNESS: Your Honor, remember what the -- the
25 fundamental opinion I offered is, that this approach is

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1 misguided. It's unreliable. And when you drop the observations
2 from preacquisition Strikeforce, as Dr. Singer did --

3 THE COURT: Yes, but your model's predicting.

4 THE WITNESS: It's not predicting. It's an
5 association. I'm not saying there's causality here.

6 THE COURT: But there's strong correlation.

7 THE WITNESS: I said there was no causality in his
8 regression.

9 THE COURT: Yeah, but --

10 THE WITNESS: I'm saying you can't find a negative --

11 THE COURT: Dr. Topel, the purpose of finding
12 coefficients to be statistically significant is exactly to argue
13 that there is some correlation or causation. Otherwise, there
14 would be no point to them.

15 THE WITNESS: Whoa. Whoa. Whoa.

16 THE COURT: But -- so my point is, your regression is
17 saying that in these -- for example, for certain of these
18 classes, these stratified classes, there would be -- there would
19 be an increase. Now, in some respects, it's not inconsistent
20 with what Dr. Singer said because for the 1 to 15, those are
21 actually people who actually were outliers in the model that he
22 used. But for these other -- for these other ranked foreclosure
23 share fighters, it looks like there's a positive relationship,
24 at least for some of them. So, I just want to be clear that's
25 what the model says.

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1 THE WITNESS: Remember what -- in your phrase you had a
2 very -- in your statement you had a very important conditioning
3 phrase. You said "causation or correlation." And one of the
4 most famous phrases in statistics is that correlation is not
5 causation. And there's a correlation. After he's removed all
6 of these other sources of variation, there's a correlation and
7 it turns out it's positive. That's -- I can't do anything about
8 it.

9 THE COURT: No, I'm not saying you can. I'm just
10 saying that's -- that's what the model, based upon what -- the
11 regressions you ran, is saying, there's a positive correlation.

12 THE WITNESS: The residual correlation between these
13 shares and the wage share after removing Strikeforce is a
14 negative.

15 THE COURT: Okay.

16 THE WITNESS: In some places it's positive.

17 THE COURT: Well, on yours, it's all positive, though,
18 right?

19 THE WITNESS: Well, no, I -- in some places it's even
20 got some statistical significance --

21 THE COURT: Right.

22 THE WITNESS: -- under the assumptions of calculating
23 significance.

24 THE COURT: Okay. All right. Then let's move onto the
25 next one, Mr. Isaacson.

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1 MR. ISAACSON: That would be Exhibit 2.

2 This is the second regression discussed on page 3 of
3 the letter.

4 THE WITNESS: Yeah.

5 THE COURT: And what is this regression purporting to
6 do?

7 THE WITNESS: You and I had an exchange yesterday about
8 if you have a variable that is constant within a year. And I
9 said if you have year effects in the regression, you can't
10 estimate an effect of that variable because it's perfectly
11 colinear with the year effects. And you seemed to want to see
12 what the effect of that variable could be. And I said, well, I
13 can't show it to you because the computer won't take it. But
14 the computer will take it if I take out the year effects. So I
15 removed the year effects and put this thing that's constant
16 within a year, which is promotional expenses per event. And
17 it -- it's --

18 THE COURT: Did you run it -- what other variables did
19 you run it with?

20 THE WITNESS: Everything -- nothing changed except I
21 took out the year effects and put this in. And this is on
22 the -- also the -- the removing the Strikeforce data.

23 THE COURT: Okay.

24 THE WITNESS: All right?

25 THE COURT: Uh-hmm.

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1 THE WITNESS: And you can see that the sign -- you were
2 wondering about the sign of that or the effect of that
3 promotional expenditure per event. When that's put in there,
4 it's got a negative coefficient which is kind of what you'd
5 expect because that affects revenue that's in the denominator of
6 the left-hand side, but --

7 THE COURT: But not substantially, though, right? I
8 mean, you're talking about .003.

9 THE WITNESS: Well, it's in millions and, so, you got
10 to multiply it out by the appropriate amount.

11 THE COURT: No. That's true, but I'm saying that's why
12 I would wanted to look at the other coefficients, too, to see
13 how it might affect.

14 THE WITNESS: Yeah. Yeah. Yeah. But the only point
15 is we put it in, there it is, and then the foreclosure share in
16 those regressions, and these are --

17 THE COURT: It's not statistically significant.

18 THE WITNESS: Yeah.

19 THE COURT: Okay. All right. Then the last one.
20 Bless you.

21 This will be Defendant's Exhibit 3.

22 THE WITNESS: Yeah, I got to look up my discussion
23 here.

24 THE COURT: Okay. This is a just different way of ...

25 THE WITNESS: I can't ...

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1 Yeah, these are just the unweighted foreclosure share
2 without preacquisition Strikeforce.

3 THE COURT: Right. Now, all of these are regressed on
4 wage share and not absolute wages. Is that right?

5 THE WITNESS: Wage share.

6 THE COURT: Okay.

7 THE WITNESS: And we had had stuff before saying that,
8 you know, if you drop Strikeforce and you don't have -- and
9 you -- and you don't weight, then you get these results. And
10 this is just including the log -- the event costs or the net
11 event costs after fighter compensation in the regression.

12 THE COURT: Okay.

13 THE WITNESS: Okay?

14 THE COURT: All right. Thank you, Dr. Topel.

15 THE WITNESS: Thank you. Now can I step down?

16 THE COURT: Now you can step down.

17 THE WITNESS: Okay.

18 (Witness excused.)

19 THE COURT: So what we're going to do is take a little
20 break right now and then we'll come back. And I'm sure that the
21 parties will want to talk about their regressions. I will think
22 about them, too. We'll take about a 15-minute break, and then
23 we'll come back and talk about the regressions. And we'll,
24 after that, have Dr. Singer come back on the witness stand. So
25 we'll be in recess for a few -- 15 minutes or so.

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1 (Recess taken at 10:47 a.m.)

2 (Resumed at 11:08 a.m.)

3 THE COURT: Please be seated.

4 All right. We're back on -- sorry.

5 We're back on the record here in this case. So,

6 Mr. Isaacson, few questions for you. And, again, I want to make
7 sure as I'm understanding as relates to these new regressions.

8 MR. ISAACSON: I would like to make one correction for
9 the record, though, an error we made. I misnumbered the
10 exhibits. So, his testimony is all right. He doesn't have to
11 change any of his testimony.

12 THE COURT: I'm sure Dr. Topel is happy to hear that.

13 MR. ISAACSON: He did -- right. But when he was
14 testifying about number 2, that was number 3 in the letter, and
15 vice versa.

16 THE COURT: Okay.

17 MR. ISAACSON: So -- and -- so, but he correctly
18 explained the regressions in front of him.

19 THE COURT: Okay.

20 MR. ISAACSON: I misstated the relationship to the
21 letter.

22 THE COURT: Okay. So you -- you were the problem is
23 what you're saying?

24 MR. ISAACSON: Yes. Yes. 100 percent.

25 THE COURT: Okay. So one of the questions I have for

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1 you, Mr. Isaacson, and it's simple, which is that it's not
2 clear to me necessarily that a variable being statistically
3 significant or not knocks out the model at class certification.
4 And we should have a little bit of that conversation because the
5 standard is -- is certainly -- there is some disagreement about
6 what the standard is.

7 But is it your position that the fact that a variable
8 isn't potentially statistically significant as run by one of the
9 experts, that that's sufficient for me not to accept the
10 plaintiffs' model?

11 MR. ISAACSON: That -- that sentence alone, no, we have
12 not stated that. It depends --

13 THE COURT: Okay.

14 MR. ISAACSON: -- it depends on context and what we're
15 talking about.

16 THE COURT: So, as I understand it, the purpose,
17 potentially, for the use of these regressions might be to -- and
18 I'm focusing on the new regressions in particular. It doesn't
19 seem to me that they're fundamentally helpful in the context of
20 the standard that I have to apply, which relates to whether or
21 not I would find the modelling so flawed that the case couldn't
22 proceed, either from a persuasive or a reasonable juror
23 standard, whatever it is.

24 And, so, I wanted just to clarify with you what your
25 argument would be regarding the standard. Because it seems to

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1 me the use of these potential regressions really goes back to
2 some of the more foundational critiques that Dr. Topel raised,
3 which were in his testimony before the new regressions were run.
4 So it's not clear to me that they add anything substantively to
5 what he's already done and said.

6 He talked about, in his report there was that paragraph
7 you all referenced, about the issue of the fixed-year effects
8 and how they might impact or not the foreclosure share, which
9 is -- that -- I don't remember the exact paragraph number, but
10 about the rates. So, he raises these critiques in his reports.
11 And, so, it's not clear to me that they add something
12 fundamentally new. Maybe you can help me understand what they
13 add, because they're consistent with some of the critiques he's
14 raised. He did them substantively previous to that. They're
15 consistent with some of the foundational critiques he had of
16 Dr. Singer's modelling. So I don't know what they add to my
17 analysis here.

18 MR. ISAACSON: So, I would agree that the fundamentals
19 have been presented in the record and in the reports. What
20 these add, which would be incremental as opposed to fundamental,
21 is, Your Honor, and I'll separate out the one that -- where we
22 never had the opportunity to respond. But the ...

23 With regards to these regressions, what they add is
24 after Dr. Topel makes his fundamental critiques, sometimes the
25 Court asks, well, if you include that in the regression, what

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1 happens. These regressions confirm that when you -- not -- as
2 Dr. Topel is explaining, not that a good regression has now been
3 produced that shows no harm, but that once you apply this
4 critique, you get this meaningless result from the -- from the
5 regression.

6 THE COURT: Right. Well -- and, so, I appreciate that.

7 MR. ISAACSON: It's incremental and answers that
8 question. That's what they do.

9 THE COURT: And I appreciate that because again,
10 Mr. Isaacson, I don't think the standard here is going to turn
11 on, or should turn on, different models that produce different
12 statistical significance for the variables because of the
13 different choices that can be made with respect to variables,
14 which are not about a flaw in the overall sort of process of how
15 the regression was run, but are about discretionary judgment
16 calls that the experts make.

17 MR. ISAACSON: And I --

18 THE COURT: And, so, to me, there can be, and I think
19 you all have tried to point out, some potential judgment that
20 may be so significant that they render the model flawed, and I'm
21 not saying one way or another whether or not I accept them, but
22 these new regressions don't seem to speak to that point. And
23 I'm not inclined to -- to consider them not because I think that
24 they aren't consistent with the argument. I think they are, but
25 they don't add enough that it would -- that would then warrant,

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1 which I think I might feel obligated to do, the plaintiffs being
2 allowed to run sort of counter-regressions or talk about it.

3 And that's why I wanted to ask you about it because
4 it -- it seems to me that they're consistent with what are the
5 critiques that have been made about the choice of the revenue
6 weighting or not and how that might impact the modelling by
7 Dr. Singer and also consistent with the critique that -- as it
8 relates to the choice of which bouts to include, how that might
9 impact, and particularly as relates to the fixed-year effects,
10 the foreclosure share -- foreclosure share's impact on the wage
11 share. But those were things that were raised previously.

12 MR. ISAACSON: So, these are not advanced to have a
13 debate about judgment calls. These are just advanced to say, if
14 the question's asked, if you take into account this fundamental
15 critique and incorporate it into the regression, do the
16 plaintiffs still have a good result? And the answer is no.

17 THE COURT: Well, the answer's no for your expert, and
18 I suspect that the answer would be yes for their expert.

19 MR. ISAACSON: Well --

20 THE COURT: And the reason why I'm saying that to you
21 is that the going back and forth with statisticians about making
22 variables statistically significant, that could be an endless
23 process with people tinkering as to how to rework the variables.
24 And that's why I asked you about the fundamental standard
25 because I don't think, even if they both come up with different

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1 results, that that means that the model is flawed. It could be
2 flawed. It could not be flawed. But it wouldn't turn on both
3 of these experts running regressions where one finds a variable
4 to be statistically significant and another doesn't. That, to
5 me, is not the standard, and I think you agree with that.

6 MR. ISAACSON: I essentially agree with that. It's a
7 -- but it's -- you know, it's a
8 what's-good-for-the-goose-is-good-for-the-gander issue, is that
9 this is -- work is done so that Dr. Singer can't get on the
10 stand and say, even when you take this into account, the
11 regressions all turn out wonderfully.

12 THE COURT: Well, he can say that because he can say I
13 ran them differently. I mean, and that's the issue for the
14 Court, right? And the other issue is, to what extent -- and
15 I'll ask you this question -- under the standard you propose the
16 Court should be making credibility findings about the expert's
17 testimony. Because in addition to the modelling, there has
18 certainly been challenges to the actual credibility of the
19 experts as it relates to their statements and what they mean,
20 for both -- you both have crossed these experts and challenged
21 them on some of their statements.

22 And what is your position about sort of whether or not
23 the Court, at this stage, should be making credibility
24 determinations with respect to the testimony?

25 MR. ISAACSON: I think you had -- you look at the whole

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1 evidence. So, you had -- as I said from the -- as we discussed
2 I think at the beginning of this hearing, the standard is
3 whether the plaintiffs are -- after a rigorous analysis, whether
4 the plaintiffs are presenting a persuasive case and that takes
5 into account the defense evidence. So, I'm not aware of --

6 THE COURT: I mean -- I mean, from a personal
7 credibility standpoint from witnesses. So, in other words, is
8 it the Court's role here just to evaluate the modelling and look
9 at the testimony in the context of the explanation of that
10 modelling, or, as you know, in other types of evidentiary
11 settings, the Court makes -- can make broader credibility
12 determinations as it relates to experts or witnesses, or whoever
13 appears before the Court. And I'm not sure if you're saying
14 that there's some distinction here between this evidentiary
15 hearing and other evidentiary hearings in the context of a class
16 certification or not.

17 MR. ISAACSON: Well, I don't think anyone has called
18 Dr. Singer a liar or Dr. Topel a liar. And --

19 THE COURT: No.

20 MR. ISAACSON: And, so, I don't think it's -- that's --
21 that's not what's going on here.

22 THE COURT: No. I don't think it's that. But I do
23 think there have been arguments made by both sides about whether
24 or not the respective experts are taking certain liberties with
25 certain types of modelling principles and certain economic

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1 principles. And I think both of you have challenged whether or
2 not the variables are appropriately normed to economic
3 principles as it relates to monopsony in particular.

4 And, so, in that area, I do think that you have
5 challenged -- both of you, in different ways -- the credibility
6 of the experts to the extent that they may have emphasized
7 certain principles over others or certain types of approaches
8 over others in that context, and that's what I mean.

9 MR. ISAACSON: I don't think of that as principally a
10 credibility issue.

11 THE COURT: Okay. That's fine.

12 MR. ISAACSON: If a model is not geared to fundamental
13 economics, the model should be rejected. And, you know, I would
14 guess, you know, secondarily someone could call that a
15 credibility issue, but the primary part of it is whether the
16 model is economically flawed or based on principles of economics
17 which are incorrect.

18 THE COURT: Well, no, and I'm not saying that because I
19 -- I have to because they're econometricians, I have to rely
20 upon them, and have relied upon them, to elaborate what are the
21 relevant economic principles. And so I have to start with that
22 because I don't start with any foundational or sort of
23 judicially-noticed economic policy, right? I start with the
24 fact that they have to give me what they understand to be the
25 principles related to the exercise of monopsony power, how you

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1 would capture that, what would be evidence of that, and I've
2 relied upon both of them -- or I will -- both of their
3 testimony, to come up with what the principles that are relevant
4 are in this context.

5 And while they've given, I think, fairly similar
6 definitions, there have been nuanced differences that I think
7 are still significant in the context of the modelling. And, so,
8 that's why I wanted just to ask you a little bit about that
9 because that also goes back to the issue of these regressions,
10 honestly, because I don't think that I'm going to include them,
11 not because I think that they aren't responsive necessarily to
12 what the Court had asked, but because I think that they're --
13 they're essentially duplicative of what's already in front of me
14 in terms of the critiques that have been raised by the
15 defendants. I don't see anything new in what's raised here as
16 it relates to the critique of the modelling by Dr. Singer.

17 And, so, I mean, we'll see what the rebuttal testimony
18 is, but at this point in time I am not inclined to accept them,
19 again, not on timeliness grounds for now, but on the -- on the
20 ground that at this point I think they are not even -- I mean,
21 potentially marginally helpful, but not necessarily helpful in
22 what's already been before me, so --

23 MR. ISAACSON: All right. Understood, Your Honor.

24 Then with respect to our objection to Dr. Singer's
25 regression in his last report, which we made in our -- when we

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1 summarized this for the Court in the letter August 7th before
2 this hearing, which is Docket No. 705, we reiterated this -- we
3 gave a chronology -- the Court had asked for a chronology of how
4 this issue had been --

5 THE COURT: Right.

6 MR. ISAACSON: -- and we gave the chronology and
7 reiterated that we objected based on the joint motion to the new
8 regressions that were in his last report. And the joint motion,
9 which was so ordered by the Court in Docket No. 628, the joint
10 motion is Docket 545, expressly says, in paragraph 5, that with
11 respect to Dr. Singer's last report, he will not include -- I
12 quote, will not include any new regressions.

13 And, so, the -- the new regressions there that we were
14 responding to which the Court doesn't find helpful for us to
15 respond to, we think should be precluded. And you don't have to
16 decide that right now, but --

17 THE COURT: Well, I want to -- I'm going to pull up
18 the -- again, the portions of the report that you think, if I'm
19 not accepting these regressions, shouldn't be included just so
20 that we're clear, and also Dr. Singer can be clear about what he
21 can and cannot testify about.

22 Let's go to the -- let me see if I can pull up ...

23 Just so we're clear, Mr. Isaacson, maybe you or your
24 team can point me to which exhibit.

25 MR. ISAACSON: They're outlined -- they're detailed

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1 actually in the letter of August 7th.

2 THE COURT: I'm looking.

3 MR. ISAACSON: So -- so, this is Dr. Singer's fourth
4 report, which is ECF 554 -- well, that's probably an attachment
5 to a large brief, but it's a May 28th. It's his fourth report
6 or --

7 THE COURT: And I'm going to want to find that so
8 that's why I'm saying --

9 MR. ISAACSON: Yeah. Singer's Second Supplemental
10 Report.

11 THE COURT: Do we have the --

12 MR. ISAACSON: Exhibit 86 in this hearing.

13 THE COURT: Hold on.

14 MR. ISAACSON: Or ... maybe -- no. Maybe that's not to
15 this hearing.

16 THE COURT: Yeah. No, no. It's 5- -- Document 554,
17 Exhibit 3?

18 MR. ISAACSON: Yes.

19 THE COURT: Okay.

20 MR. ISAACSON: And the --

21 THE COURT: I think -- well, it doesn't -- this has
22 been filed under seal. Sorry.

23 MR. ISAACSON: And the three new regressions are Table
24 A1.

25 THE COURT: Where is the sealed reply response?

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1 Oh, here we go.

2 I'm sorry, the three new regressions are?

3 MR. ISAACSON: Table A1 of that report.

4 THE COURT: I'm just trying to pull up the sealed
5 document. Because this was -- this was sealed then, this
6 portion of it?

7 MR. ISAACSON: I suspect so. I don't have that in
8 front of me, but ...

9 If you want the exhibit number, if that's more helpful
10 to pull up --

11 THE COURT: That might be.

12 MR. ISAACSON: It's JCCX 78.

13 THE COURT: And in terms of the exhibits that were
14 submitted to the Court?

15 MR. ISAACSON: Right. So that's a joint exhibit.

16 THE COURT: Right. JCCX -- I'm sorry, what number?

17 MR. ISAACSON: 78.

18 THE COURT: There we go.

19 And which table?

20 MR. ISAACSON: A -- A1.

21 (Pause.)

22 THE COURT: And, so, the idea of these regressions
23 would be in direct response to these particular regressions in
24 Table A1?

25 MR. ISAACSON: Yes. So, again, the joint motion, which

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1 was so ordered by the Court, said that in his report, quote, he
2 will not include any new regressions.

3 THE COURT: Right.

4 MR. ISAACSON: Those are regressions.

5 THE COURT: Mr. Cramer.

6 MR. CRAMER: Your Honor, these are not new regressions.
7 What happened was, just to play out what -- how this happened,
8 Dr. Topel complained that if you control for promotional
9 spending -- that you had to control for promotional spending.
10 So Dr. Singer put in a variable to control for promotional
11 spending. Dr. Topel responded and said, that's not good enough.
12 You have to control for all non-fighter event costs. And he
13 runs a regression.

14 The report we're talking about is responding to
15 Dr. Topel's all-fighter -- all non-fighter event costs, right,
16 and all Dr. Singer is --

17 THE COURT: She's saying you have to get in front of
18 the microphone.

19 MR. CRAMER: Yeah. All Dr. Singer is doing in that is
20 pointing out a simple error made by Dr. Topel, in his
21 regression, all --

22 THE COURT: So let me ask you this question,
23 Mr. Cramer.

24 MR. CRAMER: Yeah.

25 THE COURT: I've asked Dr. Topel about his regressions.

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1 They seem to try to run counter to these regressions. And as I
2 said to Mr. Isaacson, the fact that he may have different
3 significance for these variables is not really going to, from my
4 standpoint, be dispositive of the issue before the Court. And,
5 so, to the extent that I were to accept the regressions as
6 different regression analysis of these same variables, I could
7 accept them. I don't know that they really -- that they -- they
8 move the needle at all. I don't think they require, honestly,
9 any rebuttal regressions because -- and in looking at this chart
10 again, the chart is its own rebuttal to the regressions that he
11 ran.

12 So, I don't know that you would need to have Dr. Singer
13 rerun the regressions. Dr. Singer's run regressions that show
14 statistical significance for the variables, including what he
15 thought Dr. Topel ran, and Dr. Topel's run different
16 regressions. Not surprisingly, they have reached different
17 results.

18 So, let's assume for the moment, if I were to accept
19 these regressions, why would there be a need even to rerun
20 additional regressions?

21 MR. CRAMER: We don't want to rerun additional
22 regressions.

23 THE COURT: Okay. So what I'm saying, even if I
24 accepted these regressions as some attempt as a counterpoint to
25 these, these regressions in this case will speak for themselves,

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1 right. So I don't know that I would need to look elsewhere.
2 They, in fact, in looking at them again now, match up fairly
3 directly as a rebuttal to what Dr. Topel ran, and you all could
4 argue to me why one would be more significant than the other.
5 But I don't -- now that I look at, again, this table, I mean, I
6 could accept the regressions. I don't know that it changes
7 anything. But in just a sense of fairness, I could accept them
8 and then look at the different models.

9 So, I'm saying that to you because I may just accept
10 them, but I don't know that, again, looking at the model, that
11 it changes anything.

12 MR. CRAMER: Your Honor, we agree with you on the
13 standard.

14 THE COURT: Okay.

15 MR. CRAMER: Let me just say there are three different
16 things that my opponent wants to put in. One responds to the
17 regression that you're looking at the table for, right? They
18 say, this is a new -- this is semantic discussion about whether
19 that is a new regression or we're just pointing out that
20 Dr. Topel's regression, if you did make a simple error by
21 excluding partial data, it works, right? We just say you
22 just -- all we did was take Dr. Topel's regression, the one he
23 ran, and said, if you didn't make this mistake, the whole model
24 works perfectly. Right? That's the only thing we did. We
25 don't consider that a new regression. All we were doing -- all

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1 we were doing was just -- just rerunning Dr. -- just presenting
2 Dr. Topel's regression.

3 THE COURT: Right.

4 MR. CRAMER: The agreement was that we wouldn't run
5 some new regression with a new variable. We did not do that.

6 THE COURT: So you're talking about the stratified
7 regressions as being new?

8 MR. CRAMER: All of the things that Mr. Isaacson wants
9 to put in now are new. Right? We -- this report was in May
10 2018. The first we heard of any potential objection to the
11 table you're looking -- Your Honor's looking at, A1, was in July
12 of 2019 as we were heading towards this hearing.

13 THE COURT: Right. But my question to you is this,
14 Mr. Cramer.

15 MR. CRAMER: Yeah.

16 THE COURT: Assuming for the moment I accept that
17 they -- they run what they run. My decision is not going to be
18 based upon a finding that they have improperly run regressions.
19 I don't think, honestly, there's been any support for the idea
20 that Dr. Topel or Dr. Singer improperly ran the regressions.
21 Right? This is about the choice of the information that went
22 into the regressions and whether or not the choice of the
23 variables is reasonable.

24 And I'm saying that to you to say, I can accept these
25 regressions. They're not going to change that part of the

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1 Court's inquiry. They don't, from my standpoint, add anything
2 along those lines because they're consistent with Dr. Topel's
3 critiques. And, so, to the extent that I would consider them, I
4 would consider them as it relates to, I guess, a -- sort of a
5 natural extension of an argument that the defendants have made,
6 but as I've said, now a few times, finding statistical
7 significance between -- or a difference of a finding of
8 statistical significance between two experts is what I would
9 expect, right?

10 MR. CRAMER: Your --

11 THE COURT: Honestly. I'm not saying that's what you
12 pay experts to do, but that's what I would expect. I wouldn't
13 expect that Dr. Topel would have come back and said, I
14 completely agree with Dr. Singer that all of these variables are
15 statistically significant because that would be the end of the
16 case for the defendants.

17 So, all of that is to say this: Based upon this,
18 Mr. Cramer, I'm inclined to allow for the regressions to be
19 included just for completeness, but -- but to the extent that I
20 would think that they would have anything more than a -- again,
21 a marginal sort of impact, then I would let you come back and
22 run a regression. But I don't think that they have anything
23 more than that. I mean, just so the record is clear, I mean I
24 guess I could include them, but I don't know that I have
25 anything more.

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1 MR. CRAMER: Your Honor, I appreciate that. I just
2 want to draw a distinction. There are two groups of new things
3 that Zuffa wants to put in. One new thing responds to Table A1
4 that Your Honor is looking at. They say it's a new regression.
5 We say it's the same old regression. Right? So that's one.

6 The other set of regressions, two sets that they want
7 to put in, are completely new. They have no argument as to why
8 they're new. They respond to a regression in Dr. Singer's April
9 2018 report to which Topel already had an opportunity to
10 respond in writing.

11 THE COURT: So which regression are you talking about?

12 MR. CRAMER: So -- Your Honor, let me grab the
13 exhibits.

14 So, Mr. Isaacson referred to Exhibits 1 and 3, though I
15 think they --

16 MR. ISAACSON: And then I misnumbered them to make your
17 life more difficult.

18 MR. CRAMER: So 2 and 3 were ... Well, I'm just going
19 to take them in the order --

20 THE COURT: We need the title of the regression. That
21 may help.

22 MR. CRAMER: Okay. Table -- the first one is Table A3
23 in Dr. Singer's April 3rd, 2018, report with preacquisition
24 Strikeforce bouts removed. This, Dr. Topel had a full and
25 complete opportunity to respond to in a report. This argument

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1 that Mr. Isaacson is making again doesn't refer to the
2 regression on Exhibit 1. There is no explanation as to why, a
3 year and a half later, at the --

4 THE COURT: Okay.

5 MR. CRAMER: Okay. So, that's the first one. The --
6 just going -- the next one, Table A2 in Dr. Singer's April 3,
7 2018, report, again, if you look at the notes, Your Honor looks
8 at the notes at the bottom, it responds to Singer's April 3rd,
9 2018, report. Again, Dr. Topel had a full and complete ability
10 to respond to that regression. So whatever they shot over to us
11 last night, as this hearing with Dr. Singer and Topel is about
12 to end, not only have they already had an opportunity to
13 respond, they've had our stuff for a year and a half.

14 THE COURT: So what I'm -- so --

15 MR. CRAMER: So the only -- let me just finish.
16 Your Honor, the only one to which Mr. Isaacson's argument
17 applies is 3, and if Your Honor accepts that what -- Table A1 in
18 our last report is a new regression rather than essentially
19 rerunning the same or just pointing out the same regression,
20 then the only one that should come in is the one that responds
21 to the May 28, 2018, report because Zuffa says they never got an
22 opportunity to respond.

23 Now, of course, it's plaintiffs' motion. The way this
24 works typically is plaintiffs get the last word. But this -- if
25 Your Honor is going to, for fairness sake, admit a regression,

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1 it would be this one.

2 THE COURT: Okay.

3 MR. CRAMER: Thank you.

4 THE COURT: All right. Mr. Isaacson, any final
5 comments?

6 MR. ISAACSON: I compliment you. Despite my
7 misnumbering of the exhibits, he's categorized them correctly
8 even though I don't agree with all of the arguments.

9 The Table A1 of the last report is a new regression.
10 It's explicitly against an order of the Court and, so, I think
11 it should be dis- -- disallowed.

12 THE COURT: Okay. So if I allow for the
13 counter-regression, Mr. Cramer's talking about the other two.

14 MR. ISAACSON: You should either -- in the first
15 instance, you should disallow. It in the second instance, if
16 you don't do that, you should permit both of them, yes.

17 THE COURT: Okay. So, all right. Fine. Let me hear
18 from Dr. -- so here's what I'm going to do. I'll hear from
19 Dr. Singer on his rebuttal, and then I'll decide after that
20 whether or not it's something I need to consider. And if I
21 don't need to consider it, then I'll just disallow it.

22 MR. CRAMER: Thank you, Your Honor. I appreciate it.

23 THE COURT: All right. So let's have Dr. Singer come
24 back on up.

25 All right. Dr. Singer, you recognize that you're still

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1 under oath?

2 THE WITNESS: I do.

3 THE COURT: Okay.

4

5 REDIRECT EXAMINATION OF HAL J. SINGER, Ph.D.

6 BY MR. CRAMER:

7 Q. All right, Dr. Singer. I'll let you get situated.

8 A. I think I'm ready.

9 Q. Very good.

10 MR. CRAMER: All right, Your Honor. What we're going
11 to try to do, consistent with Your Honor's wishes, is to address
12 some of the issues Your Honor raised at the end of the day
13 yesterday and then take on and respond to some of the main
14 points that Dr. Topel raised. And, obviously, if Your Honor has
15 additional questions, we know you're not shy. So, we expect to
16 hear from you as well. But if we don't get to something that
17 Your Honor wanted to hear, we hope to be able to do that and
18 you'd ask us to do that.

19 All right. Let me start.

20 BY MR. CRAMER:

21 Q. There was a lot of discussion during this hearing so far
22 about whether your foreclosure share variable measures
23 anticompetitive conduct. So the question is, in your economic
24 opinion, is your foreclosure share variable an appropriate
25 measure of the challenged anticompetitive conduct in this case,

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1 Dr. Singer?

2 **A.** It is. The challenged conduct includes, at its core, these
3 exclusive fighter contracts that were long-term and locked out
4 fighters from rival or would be rival promotions. And what my
5 foreclosure measure is aimed to do is to try to quantify what
6 share of the fighters, in some relevant antitrust input market,
7 were foreclosed from rivals. This is the key -- this is the key
8 theory of the case. The economic theory here is input
9 foreclosure or just simply foreclosure, that is, did Zuffa
10 foreclose rivals from some critical must-have input in such a
11 way as to impair the rival's ability to compete in both the
12 input market and in the output market. And that's precisely
13 what my foreclosure measure is aimed to do.

14 **Q.** Dr. Singer, have you, as economist, reached the opinion that
15 locking up more and more key fighters, this key input over time,
16 would be anticompetitive?

17 **A.** Yes. So, I just invoked the theories. I won't spent too
18 much time. There's a large economic theory that explains -- I'm
19 thinking of a seminal piece by Salop that explains how locking
20 out or foreclosing rivals from a key must-have input can be used
21 by a firm -- by a dominant firm to -- to impair rival efficiency
22 and to exercise monopoly or monopsony power. That's well
23 established in theory.

24 As an empirical matter, I have set up a test that tries
25 to explain variations in fighter wage share over time by

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1 controlling for all sorts of other factors, including some
2 procompetitive factors, that might -- might move this around,
3 might move the fighter weights around. And I found a
4 statistically significant and negative relationship, time after
5 time, specifications after specification, that told me that this
6 was anticompetitive conduct.

7 Q. Did you find anything in the record that made you
8 confident -- more confident about your conclusion in this
9 regard?

10 A. In addition to theory, in addition to empirics, yes. The
11 record evidence is pointing to the fact that it was this
12 strategy, that foreclosing rivals from -- from must-have inputs,
13 created an entry barrier that locked out would-be rivals and
14 prevented them from competing effectively.

15 Q. And we're asking for the ELMO to be turned on because I'm
16 going to ask you about a piece of evidence that you cited in
17 your report and I'm going to ask you whether -- once it comes on
18 the screen, whether this is something that supports your
19 position -- your opinion in this case. I apologize for not
20 having warned in advance.

21 A. Okay. I see it up there, but I don't see it on my -- okay.

22 THE COURT: Wait. Blanca, his -- oh, there we go.

23 So, Mr. Cramer, we've already been over this.

24 MR. CRAMER: Okay. Your Honor --

25 THE COURT: So we don't need to --

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1 MR. CRAMER: -- we'll move on.

2 THE COURT: -- go over that.

3 MR. CRAMER: Okay.

4 BY MR. CRAMER:

5 Q. In an exclusive dealing case, Dr. Singer, is it standard to
6 count up the share of contracts in the market subject to the
7 exclusionary restraints in assessing the anticompetitive
8 conduct?

9 A. Yes, not just exclusive dealing cases, bundling cases. It's
10 very standard for an economist to try to estimate the
11 foreclosure share, and they do so by exactly this, counting up
12 the contracts that contained certain provisions and trying to
13 figure out what share of either buyers, potential buyers, what
14 share of distributors, in this case what share of fighters, were
15 foreclosed from rivals.

16 Q. And --

17 THE COURT: Do you reference -- do you reference
18 reports like that in your report?

19 THE WITNESS: I do. I reference reports and I --

20 THE COURT: Can you tell me just which reports -- which
21 part of your reports indicate that, again, just so I can go back
22 and look at that? Is it in your initial report? Most likely.

23 THE WITNESS: Most likely. Yes. Yes.

24 THE COURT: All right.

25 MR. CRAMER: I have his report here, Your Honor. What

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1 was the specific citation you were looking for?

2 THE COURT: Well, he was -- Dr. Singer was indicating
3 that he had referenced in his report the fact that it was a
4 standard practice for economists to look at foreclosure share,
5 or some variation of the foreclosure share, or exclusivity, in
6 terms of assessing sort of market power, I assume. And that's
7 what you were doing in this case, right?

8 THE WITNESS: In this case, correct. Correct, yes.

9 MR. CRAMER: And we'll endeavor to provide those
10 citations, Your Honor.

11 THE COURT: Okay.

12 BY MR. CRAMER:

13 Q. All right. Now, Dr. Topel, as you heard his testimony,
14 asserts that your foreclosure share variable might be picking up
15 procompetitive aspects of Zuffa's conduct. And he has two
16 flavors of this argument, and I want to take them one at a time.

17 First, he says, that by including the revenue
18 weighting -- and we're going to talk more about revenue
19 weighting later, but by including the revenue weighting, the
20 additional dollars that Zuffa earns by being a good promoter
21 make its share of the foreclosed market larger. Is Dr. Topel
22 right about this argument? Is that -- are you being unfair to
23 Zuffa in some way?

24 **A.** No, I'm not. And just to be clear, remember what
25 drives increases in my foreclosure share, what even allows it to

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1 be positive in the first place. It has to be the case that
2 Zuffa's locking up fighters into long-term exclusive contracts.

3 Now, it's true that conditional on having those
4 contracts in place, that going out and doing procompetitive
5 things, like, I think you said, oh, increasing demand or driving
6 up revenues, right, could have an effect on increasing my
7 foreclosure share. But this is the key, is that in the absence
8 of the restrictive long-term exclusive contracts that doing
9 those procompetitive things would not have increased the
10 foreclosure share. That is to say, the only -- the only thing
11 that's moving the foreclosure share, the only necessary element
12 to the foreclosure share is the anticompetitive conduct. So
13 there's -- there's no chance.

14 And I want to make one other point here on -- oh, of
15 course, I encourage Zuffa to go out and do wonderful things to
16 grow their revenue, right.

17 The revenue critiques that Dr. Topel lodged could only
18 speak to my revenue weighted foreclosure share, of course.
19 Right? I have -- I have other foreclosure share metrics,
20 including unweighted foreclosure share and ranked weighted
21 foreclosure share. So, certainly, for those two alternative
22 metrics of foreclosure share, anything that Zuffa is doing,
23 including procompetitively, to increase its revenue, has no
24 chance of increasing those measures of foreclosure share.

25 Q. All right. And --

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1 THE COURT: So -- so -- I'm sorry. So their critiques
2 on the use of the revenue weighting, you say, simply don't apply
3 to those other regressions because they don't include revenue
4 weighting?

5 THE WITNESS: Exactly, Your Honor.

6 MR. CRAMER: And we're going to talk --

7 THE COURT: And where are those regressions? Are they
8 in your initial report or in the sup?

9 THE WITNESS: Sure. I'm remembering a Table 6 of my
10 initial report where I showed the regression results for
11 different market definitions and then different weightings and
12 then in the appendix and in the backup material. We do it
13 every -- we do it every way.

14 THE COURT: Okay.

15 THE WITNESS: And it's very important to know that
16 while I think the revenue weighting, when we go to a very large
17 pool, is the right and best way to do it, I recognize that there
18 are alternatives. And that's why I use a rank weighted method
19 as well.

20 THE COURT: And even -- even under the unweighted
21 regression, the foreclosure sale -- foreclosure share is still
22 statistically significant negatively?

23 THE WITNESS: For certain specifications, that is true.
24 That is true, Your Honor.

25 MR. CRAMER: And we're going to go through those, but

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1 Your Honor asked for a citation. So, in his first report, in
2 footnote 453, he mentions that he runs the model. It's robust
3 to all of these different weighting schemes. And then in is
4 second report, in paragraph 148, he has a more explicit
5 explanation of what's going on. So I'll put that up so you can
6 describe what this is talking about.

7 THE WITNESS: Okay.

8 BY MR. CRAMER:

9 Q. So, here you say, in your second report, in paragraph 148,
10 "In addition to being incorrect, Dr. Topel's claim that using
11 revenue weights introduces a mechanical negative correlation
12 into my impact regressions is irrelevant." We're going to
13 respond to that, even though it's irrelevant, in a minute. But
14 what I wanted to point out to His Honor is, it says, "As I
15 explained in my initial report, to demonstrate the robustness of
16 my impact regressions, I confirmed that my impact regressions
17 continue to find a negative and statistically significant -- and
18 economically significant relationship between Zuffa's
19 foreclosure share and the fighter share even when Zuffa's
20 foreclosure share is calculated using an unweighted count of
21 fighters. Therefore" --

22 THE COURT: And that's -- okay. And, so, where is the
23 chart for that? That -- you said -- well, it looks like there's
24 a footnote there. I'm just saying, was there a chart that went
25 along with that?

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1 MR. CRAMER: I think that we chart the foreclosure
2 share using various different of these weightings, and the
3 output of these models were all turned over in the backup. But
4 I don't think we have separate regression, because we ran this
5 10 or -- 10 different ways. These are basically showing that
6 the model works.

7 THE COURT: Right. I'm just saying, was there a --
8 there was an associated chart with this particular sentence.

9 THE WITNESS: I think Your Honor is asking, was there a
10 table that showed the --

11 THE COURT: A table. Excuse me.

12 THE WITNESS: Yeah.

13 THE COURT: A table, yes. Excuse me.

14 THE WITNESS: We had multiple tables, but I can't
15 recall if we had tables. But if we didn't provide a table, we
16 provided the progression output for every specification that I
17 ran.

18 MR. CRAMER: And if we did, I will point that out to
19 Your Honor.

20 THE COURT: Okay. All right. Thank you.

21 MR. CRAMER: Okay.

22 BY MR. CRAMER:

23 Q. All right. So before we get more down the road of revenue
24 weighting, another version of Dr. Topel's argument about your
25 foreclosure share picking up procompetitive effects is that your

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1 foreclosure share variable is picking up Zuffa's recruiting of
2 new fighters. They do a good job promoting, recruiting new
3 fighters, just by being a great promoter. Doesn't -- does that
4 improperly increase foreclosure share, in your view?

5 **A.** No, it does not, because, again, in the absence of the
6 long-term exclusive contracts, if Zuffa went out and pro- --
7 procompetitively recruited athletes by having a better venue or
8 just in their recruitment policies, and brought more athletes
9 over, that would not have contributed to increases in my
10 estimate of the foreclosure share. The only -- the necessary
11 element for the foreclosure share to run is the exclusionary
12 contracts.

13 **Q.** All right. Let's talk more -- in more detail about the
14 revenue weighting. And, first, and just for background, just
15 remind the Court and me why you felt you needed to apply
16 weighting in the ranked market in particular?

17 **A.** The ranked market contains thousands of fighters. And I
18 think there's an agreement among the experts that once you
19 expand the net, once you cast the net this wide, and you have
20 fighters that are ranked between 1 and 650 by weight category,
21 you need some sort of weighting methodology. In fact, Dr. Topel
22 testified to that effect.

23 Now, I agree with him. And what I -- I offered, too,
24 and what I thought the most appropriate one was, because we were
25 trying to figure out value in the creation of revenue

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1 productivity, I thought -- I thought a weighting the fighters --
2 the pool of fighters, by their associated promoters' average
3 revenue per event was the best estimate.

4 Q. All right. Now, Dr. Topel criticizes this. He says that
5 your method was improper because you weighted Conor McGregor the
6 same as the 6th -- the 100th ranked fighter at Zuffa, you know,
7 because -- just because they're both at Zuffa.

8 I'm going to ask you whether this critique makes sense,
9 and I'm going to note for the record that Dr. Singer responds to
10 this specific critique in his rebuttal report at paragraphs 133
11 and 134.

12 But, Dr. Singer, does this critique make sense?

13 A. It doesn't, and it doesn't for several reasons. Let me see
14 if I can kind of quickly tick through.

15 So, first, it's not appropriate to think about
16 weighting when I do the revenue weighting as it applies to each
17 individual fighter. That's not what I'm trying to do. I'm
18 trying to come up with a value of Zuffa's market share, not the
19 market share of a fighter. I'm trying to come up with Zuffa's
20 market share. And, so, I want to take the pool of Zuffa's
21 fighters and then I want to apply a weight to that pool that
22 captures why these fighters are more special, potentially, than
23 other fighters, have more value. And then I apply the pool,
24 right? And, so, yes, it's true that fighters with different
25 rankings within the Zuffa pool are going to all get hit with

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1 this same average revenue per event.

2 The second -- the second point that I want to make, and
3 Your Honor mentioned this yesterday, is that due to these
4 network effects, it is true that when a fighter comes onto the
5 Zuffa -- to the Zuffa family, inside the Zuffa portfolio, that
6 fighter now gets to interact with the set of more valuable
7 fighters. So it makes sense that we should think of the
8 collection of fighters, not an individual fighter who might be
9 down in the ranks as being somehow treated differently. It's
10 the pool of the fighters and the value of what Zuffa's bringing
11 those network effects.

12 The third thing I want -- I want to mention is that I
13 like the revenue weighting, but -- but to the extent that
14 Dr. Topel is uncomfortable with the idea of treating
15 Conor McGregor the same as some other Zuffa fighter with a low
16 rank, I have an alternative rate -- weighting metric that does
17 that. That is the ranked-based weighting. In that case, I, of
18 course, go through and I treat each fighter according to the
19 inverse of their ranking.

20 So, the argument that he was offering yesterday --

21 THE COURT: And in that -- and in that analysis, you
22 still have statistical significance --

23 THE WITNESS: Absolutely. Absolutely.

24 THE COURT: -- regarding the foreclosure share and the
25 wage share?

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1 THE WITNESS: Absolutely.

2 So, the last point I wanted to make, Eric, if it's
3 okay, is that -- is that what I heard Dr. Topel say was that he
4 thought compensation would be a better -- he acknowledged that
5 some weighting was necessary when the pool is this large, and he
6 thought compensation would be a good one. It might be a good
7 one, but let me just say this. My expectation is that because
8 compensation is going to be closely linked to -- to revenue,
9 that if we were to weight Zuffa's compensation -- Zuffa's pool
10 of fighters by compensation instead of average event revenue, I
11 believe that we would not move the needle in any material way.

12 And then, finally, of course, we don't have
13 compensation data for the -- for the non-Zuffa promoters except
14 Strikeforce. So it's -- it's largely an academic exercise.

15 BY MR. CRAMER:

16 Q. So Dr. Topel said that another problem with your revenue
17 weighting method is that you appear to apply substantially
18 higher weights to the same fighter when she moves from a major
19 league promotion -- I'm sorry -- from a minor league promotion,
20 like Bellator, to, you know, the majors, UFC. Is that a problem
21 for your method?

22 A. It's not a problem for the method. Again, we should be
23 thinking of -- when we do the revenue weighting, we should be
24 thinking about the pool of -- of Zuffa fighters, how big is that
25 pool in relation -- how important is that pool in relation to

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1 all of the fighters in the relevant input market.

2 So, I made this point, but it's worth mentioning it,
3 that the movement of one fighter from non-Zuffa to Zuffa is not
4 going to change the revenue weighting in any material sense.

5 I want to make another argument, which is that, again,
6 Your Honor recognized this yesterday, that there is something
7 special about the Zuffa pool. Zuffa is providing greater career
8 advancement opportunities, and it's also providing fighters with
9 better matchups because they bring a higher -- a higher ranked
10 pool of fighters. So, there is some economic intuition that,
11 yes, this fighter who's moving over from the minors into Zuffa
12 should be getting more weight. And I want -- I want to make one
13 more point, if I could, and let's see if I can bring this up.

14 These fighters are not moving across promotions
15 randomly, right? If we observe a fighter going from a minor to
16 going to Zuffa, that contains information, right? Zuffa is
17 selecting fighters not randomly to pick off. They're -- they're
18 bringing over fighters who likely have won their last five
19 fights and look like they're climbing up the ranks and we
20 potentially want to have that person in our pool.

21 So when we pick someone out, I think -- I think
22 Mr. Isaacson created this impression that we're just kind of --
23 kind of closing our eyes and we're kind of putting our hands in
24 the pool, and when out comes No. 365, why should that person get
25 more weight. It's not a random selection. That -- right? We

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1 were getting that person. There's a reason why that person's
2 coming to Zuffa, and it makes sense that they should get more
3 weight.

4 Q. Now, Dr. Topel has said that the -- the -- it's the revenue
5 weights that are the main driver of increasing foreclosure
6 share. Is he right?

7 A. He is not right. If that were true, then when you went to
8 my other metrics of foreclosure, you shouldn't see any -- any
9 movement at all when, in fact, you do see a lift.

10 Q. Now, Dr. Topel also claims that by including revenue weights
11 in your foreclosure share variable, your model introduces
12 endogeneity bias and mechanically causes wage share to go down
13 as revenues go up. Is he right about that?

14 A. He's not right, and I think this comes from a
15 misunderstanding as to how the revenue weights are constructed.
16 Let me be absolutely clear. You know how we have event revenues
17 on the left-hand side on the defend- -- that's the denominator.

18 THE COURT: Right.

19 THE WITNESS: That is the event in question, right? So
20 it's the fighter's pay in that event divided by the event
21 revenues. I do not bring over the event revenues of that event,
22 as Dr. Topel intimated yesterday in his testimony. I do not do
23 that. If I did do that, that would be a -- clearly a violation.
24 That would be endogeneity.

25 Now, let me just explain again what the revenue weight

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1 is. The revenue weight is a very -- it's a -- it's ratio of
2 Zuffa's average revenue per all events that Zuffa puts on in the
3 given year, divided by the same -- the same factor in the
4 denominator, plus the average revenue per event across non-Zuffa
5 promoters across all of their events for the entire year. So
6 it's just -- it's just a mistake to claim that I put the event
7 revenue of the event in question onto the right-hand side
8 variable in my revenue weighted models. I do not.

9 THE COURT: Okay.

10 BY MR. CRAMER:

11 Q. But you didn't stand on that particular point. You also
12 tested this, right? So, to test whether revenue weighting is
13 resulting in increasing revenues over time, pushing down wage
14 share mechanically, did you run a version of your model that
15 holds the revenue weights constant throughout the class period?
16 A. I did. So, the first reaction that I had to Dr. Topel was,
17 okay, let's assume that you're right, and that this whole thing
18 is being driven by increases in Zuffa's average revenue per
19 event relative to non-Zuffa over the course of the study period.
20 Right? How could I eliminate that influence? Right?

21 And what I did is I -- is I took the average of what
22 the Zuffa event revenue was across the entire class and I -- and
23 I locked it in place and I did the average of the non-Zuffa,
24 right? So there was no way that Zuffa's increasing revenues
25 could contribute at all, right, to the -- to the changes in the

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1 foreclosure share.

2 I reran the regression. And I found, again, a
3 statistically significant and negative relationship between the
4 foreclosure share variable and the -- and the wage share. So I
5 just -- I can't dispute strongly enough the notion that the
6 revenue weights are somehow the cause of the relationship that
7 I'm finding.

8 MR. CRAMER: And, Your Honor, that regression that he's
9 discussing was discussed in his rebuttal report at paragraph
10 147.

11 BY MR. CRAMER:

12 Q. All right. So do the results of your regression analysis
13 here depend on revenue weighting?

14 A. They do not.

15 Q. Okay. And I gave His Honor the cites for the various
16 different -- in the report at least, where the -- where -- in
17 his opening report and rebuttal report where he mentions these.

18 Does your regression continue to show a statistically
19 significant relationship between rising foreclosure share and
20 falling wage share using ranked weighting in the tracked market?

21 A. Yes.

22 Q. Does your regression continue to show the same statistically
23 significant relationship between rising foreclosure share and
24 falling wage share using ranked weighting in the ranked market?

25 A. Yes.

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1 Q. Does your regression continue to show a statistically
2 significant relationship between rising foreclosure share and
3 falling wage share using ranked weighting in the headliner
4 market?

5 **A.** Yes.

6 Q. Does your regression continue to show this relationship with
7 no weighting at all in the tracked market?

8 **A.** Yes.

9 Q. Does your regression continue to show this relationship with
10 no weighting in the ranked market?

11 **A.** Yes.

12 Q. Okay. Does your regression continue to show this
13 relationship with no weighting in the headliner market?

14 **A.** Yes.

15 Q. Okay. So when Dr. Topel says your results are entirely
16 driven by using revenue weighting to mechanically cause wage
17 share to fall, is that accurate?

18 **A.** It is not accurate.

19 Q. All right. Now, Mr. Isaacson claimed on cross-examination
20 that in performing your revenue weighting there were Bellator
21 events where revenue was listed, but you didn't count the
22 revenue.

23 Do you recall that discussion?

24 **A.** I recall.

25 Q. And he showed you ZCCX292, and I'm going to put that up on

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1 the ELMO. But before I do that, did Dr. Topel --

2 THE COURT: I'm sorry. And that exhibit is from? We
3 should admit that into the record. What -- where is that from?

4 MR. CRAMER: I believe this is from the backup to
5 Dr. Singer's report, page 9 of 10.

6 MR. ISAACSON: And it's also Singer Deposition Exhibit
7 4.

8 THE COURT: So in terms of Dr. Singer's report, it's
9 in -- it's attached to the backup of one of his reports?

10 MR. ISAACSON: It -- it's a compilation of backup. I
11 think we made it more readable, but, yes, it's directly from his
12 backup.

13 THE COURT: Okay.

14 MR. CRAMER: This is not going to be easy.

15 THE COURT: We can zoom in.

16 MR. CRAMER: We will do our best. I will do some
17 zooming.

18 BY MR. CRAMER:

19 Q. All right. Let's look -- you were -- Dr. -- Mr. Isaacson
20 drew your attention to this Bellator event with Pay-Per-View
21 revenue you can see circled at 4.5 million?

22 **A.** Yes, I see it.

23 Q. Okay. Well, actually, before I ask that, did Dr. Topel ever
24 make this attack, or any of Zuffa's experts, ever make this
25 attack in their reports?

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1 **A.** No.

2 **Q.** Okay. So this is all new at the hearing, correct?

3 **A.** Brand new.

4 **Q.** Okay. Just please explain what's going on here. What is
5 this depicting before we talk about our response to this?

6 **A.** Well, it -- the database, or this backup, is showing you
7 every event that informed my revenue weighting metric. And as
8 I -- as I testified, I needed -- I went out and got as much data
9 as I could possibly obtain. And it shows you for each event --
10 whether it's Zuffa or non-Zuffa promoter -- it shows you a
11 revenue, including a breakdown between Pay-Per-View and gate.
12 And then the -- the one that is circled, I think that
13 Mr. Isaacson took me to yesterday, was Pay-Per-View revenue for
14 a Bellator event, Bellator 120, of \$4.5 million.

15 **Q.** Okay. And did you apply a particular rule in deciding
16 whether or not to include the revenue in your weighting
17 analysis?

18 **A.** I did.

19 **Q.** What was that rule?

20 **A.** My rule was that so long as the data were -- there were no
21 missing fields in the data, I included it in the average,
22 whether it was for the average of the Zuffa promotions per year
23 or the average of the non-Zuffa. And the reason why I did that
24 is that I was worried about counting in the average data that
25 was understated.

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1 So let's look at the Bellator one, Your Honor. You'll
2 see that the gate revenue for Bellator 120 was missing in my
3 database. See the blank under "Gate" --

4 THE COURT: Right.

5 THE WITNESS: -- "Bellator 120"? And, so, what the
6 code -- the way the code was written to run was that if it -- if
7 it went through and saw that there was a missing for any field
8 in the data, it just wouldn't give any -- any import or any
9 weight to a missing observation --

10 THE COURT: Is that --

11 THE WITNESS: -- or partially missing observation.

12 THE COURT: Is that a standard approach when running
13 analyses like this?

14 THE WITNESS: Yeah -- well, yes. And in particular,
15 what we're worried about, Your Honor, is that if -- we know that
16 revenues are a combination of gate and Pay-Per-View, right? So
17 if I count observations that we know to be missing gate, it's
18 going to create the impression that that -- that that act --
19 that that revenue was too low and that's going to work into the
20 average.

21 THE COURT: Well, in some respects, what it would do is
22 actually would have pulled down Bellator's weight more than it
23 might otherwise because you wouldn't have included the revenue
24 for the gate?

25 THE WITNESS: Not necessarily. Because imagine,

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1 Your Honor, you have a bunch of observations that are complete.

2 THE COURT: Right.

3 THE WITNESS: With gate and Pay-Per-View.

4 THE COURT: Right.

5 THE WITNESS: And you're thinking about, should I
6 include this one on the margin with missing data, right? To the
7 extent that it's smaller because of the missing data, it would
8 have the effect of pulling down --

9 THE COURT: That's what I said.

10 THE WITNESS: Oh, sorry about -- sorry about that.

11 THE COURT: That's what I'm saying.

12 THE WITNESS: We're on -- we're on the same page.

13 THE COURT: No. What I'm saying is, is that the
14 critique was that, in fact, these weights for these competitors
15 was lower than it should have been because you're missing data.
16 But by not including the missing data, you're saying, in fact,
17 you prevented it from being artificially lower than it might
18 otherwise have been because it would have been higher with the
19 total input from that event.

20 THE WITNESS: That's one interpretation of the
21 critique, Your Honor. I think I took it a different way, but I
22 might be getting sensitive --

23 THE COURT: Well, no. I -- I --

24 THE WITNESS: -- in my old age.

25 THE COURT: I can understand that, for both you and

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1 Dr. Topel. No. I understood one of the issues of the critique
2 was that -- at least that's what I understood Mr. Isaacson to be
3 pointing this out, was that here you have what appears to be a
4 fairly large sort of Pay-Per-View revenue and somehow Bellator
5 is not getting credit for it.

6 THE WITNESS: Absolutely.

7 THE COURT: And that, therefore, led to this, in some
8 sense, added benefit in the context of regression for Zuffa
9 because their revenue is higher. And I understood this critique
10 to be, well, Bellator's would have been higher had there not
11 been this flawed approach to inputting the data. And what I
12 understand you to be saying, what -- this was an approach to
13 missing data, and that you did this to avoid actually having the
14 opposite effect of what they said.

15 THE WITNESS: And importantly, Your Honor, this is key,
16 I applied the rule equally to non-Zuffa events and to Zuffa
17 events, right? It's not as if I was -- I was picking on
18 non-Zuffa or in any way trying to engineer a result. I wanted
19 to make sure that the data that made it into my model was good.
20 And, so, I think -- I think Mr. Cramer has pulled up an example
21 where you can see how the rule got applied equally.

22 MR. CRAMER: UFC 180, 11/15/2014.

23 THE WITNESS: So, again, Mr. Cramer, we're missing the
24 columns -- and I know that you didn't intend this, but I can't
25 remember whether the question mark corresponds to missing gate

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1 or Pay-Per-View. Could you --

2 THE COURT: Well -- well, I understand your point.

3 THE WITNESS: Right.

4 THE COURT: Your point was that this was a -- this was
5 an approach that related to missing data that was applied
6 equally.

7 THE WITNESS: Exactly.

8 THE COURT: Okay.

9 THE WITNESS: And just --

10 MR. CRAMER: It's missing gate.

11 THE WITNESS: Missing gate. And, so, that UFC
12 observation, Your Honor, just didn't enter into the average
13 revenue per event calculation.

14 Now, I had never -- I'd never heard this critique until
15 yesterday. My days are confusing and I got crossed across two
16 days. So, it was either yesterday or the day before. And, so,
17 what I -- what I asked my staff to do is just to rerun the
18 weights, this time including -- including everything, even the
19 missing data, and it has no effect.

20 THE COURT: Okay.

21 THE WITNESS: Okay?

22 THE COURT: Thank you.

23 BY MR. CRAMER:

24 Q. All right. Now, Mr. Isaacson also pointed out on
25 cross-examination that in building your revenue weights, you

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1 only included revenue that were event specific. And, so, you
2 didn't include revenues from certain broadcast deals that
3 certain non-Zuffa promoters had. Could this possibly have
4 affected your results?

5 **A.** It could not have possibly affected it. And before we get
6 to why, I just want to, again, stress that the rule -- I was
7 looking for event specific revenue. So, a broadcast deal that
8 covered multiple events could not be allocated or attributed,
9 right. So I'm looking at -- so that's the reason why broadcast
10 wasn't included, but importantly, I'm applying the rule equally
11 to Zuffa and non-Zuffa. And, so, a lot of broadcast revenue in
12 the Zuffa events was also not counted, but there was no -- there
13 was no intent or even effect of somehow understating what the
14 other -- what the other non-Zuffa promotions looked like.

15 And this table, Your Honor, which appears in my first
16 report, shows you that there's just not enough non-Zuffa revenue
17 out there to matter. Right? And, so, what I've done here is
18 I've -- is I've calculated -- you'll see this Table 3 in Singer
19 Report 1. I calculated, given the best data available, what I
20 thought was Zuffa's revenue shares in the output market. And --
21 and I'm including in this all revenue, including broadcasting
22 revenue. And what I find is that when you sum up the non-Zuffa
23 promotions and you divide it by the total revenues in the
24 marketplace in North America for each year, you get trivial
25 shares.

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1 And what that means is that to the extent that I didn't
2 include any important sources of revenue, as Mr. Isaacson
3 asserted, right, bringing those revenues in would not cause
4 Zuffa's massive footprint to look any smaller than it did.

5 To give you an idea, if Zuffa's at 95 percent in the
6 output market, that's 95 divided by five times as big as
7 these -- as these other promoters.

8 THE COURT: Right.

9 BY MR. CRAMER:

10 Q. Did you do anything in this chart that would even make Zuffa
11 look smaller relative to the non-Zuffa promoters?

12 A. I did. I limited the Zuffa revenue to North America, and I
13 and I included all revenues for the -- for the minor league
14 rivals.

15 Q. Didn't you also include only Zuffa event revenue and you
16 compared that to all revenue for the non-Zuffa promoters, right?

17 A. That's true.

18 Q. All right. Now, Dr. Topel asserted that your regression had
19 three control variables that he deemed that had the,
20 quote/unquote, wrong signs. All right. He said -- and he said
21 that undermines your model. And I'm putting up the Topel -- the
22 slide from the Topel direct examination, slide 17.

23 Trying to make it easier to read.

24 Do you recall this slide, Dr. Singer?

25 A. I do.

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1 Q. Okay. So, he highlights here the win flag -- and this is
2 the output from your regression in Table 6 in your first report,
3 right?

4 **A.** Yes.

5 Q. Okay. And Dr. Topel highlights the win flag, the rank, and
6 the Pay-Per-View variables, correct?

7 **A.** Yes.

8 Q. Okay. Now, he said -- was Dr. Topel correct that the win
9 flag had the wrong sign?

10 **A.** No, he was not correct. The win flag has a positive
11 coefficient on it, and that means that if you win the event, all
12 things equal, this specification is predicting that the
13 fighter's wage share would be higher.

14 THE COURT: But it's not statistically significant at
15 that particular ...

16 THE WITNESS: Correct, and we will -- we will address
17 that in one second.

18 BY MR. CRAMER:

19 Q. Why don't you go ahead and address it.

20 **A.** So, Your Honor, let's -- let's be very clear. When you run
21 a unilateral regression -- a univariate regression, with just
22 win flag on the right-hand side, of course it's positive and
23 statistically significant. What's happening here is what --
24 you're probably familiar with this concept of multicollinearity.
25 And, so, win flag turns out to be very highly correlated with

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1 wins, which is another variable in the model. Wins, recall, is
2 the number of wins the fighter had obtained at the time of the
3 fight.

4 THE COURT: Right.

5 THE WITNESS: And the win flag is if you won. And, so,
6 I -- I -- in response to Dr. Topel's critique that I got the,
7 quote/unquote, wrong sign on the win flag, which I didn't, I
8 removed wins. All the regression constant, I just removed
9 wins --

10 (Court reporter clarification.)

11 THE WITNESS: I'm sorry. I removed wins, W-i-n-s, from
12 the regression just to show that it's the multicollinearity
13 between wins and win flag that is sapping the explanatory power
14 and thence -- and, thus, removing the statistical significance
15 of one of them. This is a very common -- a common occurrence in
16 econometrics, and it would -- there would be no reason to have
17 to lose faith in the overall regression.

18 Your Honor, remember, we have hundreds of controls and
19 thousands when you consider the fighter fixed effects. And, so,
20 the notion that -- that we're not going to get the precise sign
21 as one might expect for each variable and statistical
22 significance for all of our controls is not as -- is not as
23 important as what -- what we're -- again, what I'm trying to
24 focus on, which is what is the relationship between foreclosure
25 and wage share, controlling for all other things.

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1 BY MR. CRAMER:

2 Q. Is it standard practice, as Dr. Topel was suggesting, to
3 discard a regression because the coefficient on a handful of
4 coefficient -- coefficient of control variables out of thousands
5 have the wrong sign?

6 A. No, it's not standard, and particularly is wrong in the face
7 of multicollinearity when you've got hundreds or thousands of
8 right-hand side variables.

9 Q. Did you run a test that you reported in your rebuttal
10 report, at paragraph 124, to see if these fixed effects
11 variables were collectively significant?

12 A. Well, you said "fixed effects."

13 Q. I'm sorry.

14 A. I'm just going to -- sorry. The control variables.

15 Q. Control variables.

16 A. The control variables.

17 Q. I apologize.

18 A. Right. So, what I did, Your Honor, was that there was a
19 collection of control variables that -- that were not showing up
20 as being individually significant. But I ran what's called an
21 F-test which was to determine if, collectively, they were
22 contributing significantly to explaining variation in wage share
23 over -- over the panel. And the answer is they were, at -- at
24 the highest level of significance.

25 Q. Does anything about Dr. Topel's, quote/unquote, wrong signs

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1 argument undermine your regression in any way?

2 **A.** No, they do not.

3 **Q.** All right. Dr. Topel argued, or opined, that because the
4 wage level of Strikeforce fighters increased when they moved to
5 Zuffa after Strikeforce was acquired, that shows Zuffa didn't
6 have monopsony power. Is he right?

7 **A.** He's -- he's not right.

8 **Q.** Why not?

9 And I'm going to put up Dr. Topel's slide 8 from his
10 direct if that helps your answer.

11 **A.** It helps at the margin, but I -- let me -- let me just take
12 a swing at it. What I -- what Dr. Topel was -- he started off
13 his testimony as saying that he and his colleagues had figured
14 out that there's a nice way to test whether a firm has monopsony
15 power, and that is, when it absorbs new employees into the firm,
16 look to see what happened to the wages of those new employees.
17 If they stayed -- if they stay constant, you can infer that the
18 market -- that the labor market is competitive.

19 If, on the other hand, you see that the wages of the
20 newly hired workers goes up, that implies that the firm -- that
21 the buyer of those services is facing an upward sloping supply
22 curve and, therefore, one can infer that they've got monopsony
23 power. Right?

24 And, so, I -- what -- what struck me from the -- from
25 the gallery was that then he -- then he said he has a natural

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1 experiment to test whether or not Zuffa has monopsony power.
2 And he says, I look at what happened when Zuffa absorbed the
3 Strikeforce fighters. And he was very excited about the fact
4 that those on -- and on an absolute level, those fighters went
5 up in wage. And as I was sitting there saying, my, God, what
6 you just told us is that that would be evidence of monopsony
7 power.

8 The ... maybe I should --

9 Q. Is there another reason that you have to reject the idea
10 that when Strikeforce fighters go to Zuffa, the mere fact that
11 they were paid more means that they were -- that they were being
12 paid a competitive wage?

13 A. No. And I'm -- for this other reason I want to -- I want to
14 go back to the intuition that Your Honor mentioned yesterday,
15 which is that these fighters are getting now merged up with a
16 higher pool of more highly ranked fighters. And, so, it's
17 natural that their marginal revenue productivity is going to go
18 up and it's natural that their wages are going to go up in
19 absolute level. And, so, to say from that that because the
20 wages went up, Dr. Topel concludes there must be no monopsony
21 here, is just -- just wrong.

22 I also just want to say one other thing that's kind of
23 obvious, to me anyway, is that if you're a large firm and you
24 hire another -- another -- you buy another firm and you bring
25 over their employees, and if you use a pay structure, it would

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1 be -- it would be natural that you'd move those new employees
2 that are recently absorbed into the same pay structure as the
3 one that exists at your firm.

4 Can you imagine two employees speaking and knowing that
5 because you were -- you came over from the acquired firm that
6 you were going to be treated differently forever, right? That
7 probably wouldn't go down well.

8 So, when I learned that Zuffa raised these wages to
9 come into alignment, what I hear that is further support of the
10 pay structure.

11 Q. And -- and is this why you used wage share instead of wage
12 level?

13 A. Well, yes. What wage -- what wage share does is it -- is it
14 controls for those differences in revenues that reflect
15 differences in marginal revenue productivity. And the bottom
16 line here is that when those Strikeforce fighters came over, the
17 mere fact that they get mixed up with more valuable fighters,
18 right, is going to increase their marginal revenue productivity.
19 And that's what the wage share is trying to accommodate.

20 Q. All right. Let's move to another topic, your year fixed
21 effects and time trend. We had a long discussion of that, or
22 Dr. Topel and His Honor and Mr. Isaacson had a long discussion
23 of that so I wanted you, Dr. Singer, to have a chance to respond
24 to it.

25 So, Dr. Topel asserted that because you included year

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1 fixed effects in a time trend variable, your measurement of the
2 effect of foreclosure share on wage share was somehow invalid.
3 So, first of all, did Dr. Topel make this point in any of his
4 reports in this case, other than with respect to the promotion
5 spend variable?

6 **A.** No. This was a -- this was a new argument yesterday.

7 **Q.** All right. Is Dr. Topel's new argument about fixed effects
8 correct?

9 **A.** It is not.

10 **Q.** Why not?

11 **A.** So, let's start with the year fixed effects and what -- what
12 Dr. Topel asserted yesterday was that by my including year fixed
13 effects in the regression, I was limiting any contribution of
14 variation in the foreclosure share that would inform that
15 foreclosure coefficient to movements of foreclosure share within
16 a given year, but that I wasn't -- I was no longer taking
17 advantage of -- of the movements in foreclosure share across the
18 study period. And that's not correct. The -- you have to
19 remember, I'm calculating foreclosure on a monthly basis. Every
20 month it gets updated.

21 And the regression, it's very complicated, it uses
22 matrix algebra in its optimization routine, but what it's doing,
23 it's looking at average deviations in foreclosure share from the
24 year in a given month, say in 2010, and comparing those to
25 average deviations in a month from, say, 2015. So it absolutely

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1 is informed by variations in foreclosure share across years.

2 Now, I agree with him that it is also informed by
3 variations in foreclosure shares within years. But I just want
4 to say this that it was -- it was -- it was -- it was unusual to
5 hear an econometrician saying that bringing in year fixed
6 effects was somehow not standard or somehow undermined the kind
7 of -- the kind of regression. Year fixed effects, time -- a
8 time trend, Your Honor, whenever you're dealing with a panel of
9 data that goes over a long period of time -- in my case, it was
10 from the mid-otts [sic] till 2017, you have to control for the
11 fact that things could be changing over time.

12 And, so, I did it by including both a time trend and
13 year fixed effects. And by doing so, you could say that it made
14 it harder to find an effect on the foreclosure share, and
15 despite those controls, I still found one.

16 Q. Dr. Singer, you were shown --

17 THE COURT: So, it wouldn't -- it wouldn't sort of
18 remove the foreclosure share trend because you controlled for
19 them. And, so, his argument was, in part, that it sort of de-
20 -- I think they used the term --

21 THE WITNESS: Detrending.

22 THE COURT: -- "detrending" --

23 THE WITNESS: Right. He --

24 THE COURT: -- the foreclosure share as it relates to
25 its sort of increase over time, but -- which I didn't really

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1 understand it because it's based upon something completely
2 separate than foreclosure share is, which is the fighters and
3 the revenue. So I'm not sure how they --

4 THE WITNESS: I think what happened is this is all
5 coming and building up to a critique of my promotion variable in
6 which he thought didn't vary within a year, which is not true,
7 and we'll get to that in a bit. So, he had laid out in his
8 report a foundation for -- for why my inclusion of year fixed
9 effects didn't give the promotion a variable an opportunity.
10 That was all -- that was in the papers. We were ready for that
11 one.

12 What we weren't ready for, and what we heard for the
13 first time yesterday, was the idea that the year fixed effects
14 also does something to undermine the explanatory power of the --
15 of the foreclosure share. That was a new one, and I just think
16 he's wrong.

17 THE COURT: Okay.

18 BY MR. CRAMER:

19 Q. Let's talk about the time trend. Dr. Topel, like with the
20 year fixed effects variable, he claimed that including the
21 standard time trend variable, linear increases in foreclosure
22 share made no contribution to the foreclosure share coefficient.
23 Is he right?

24 A. I don't know if I heard the question correctly, but let me
25 just say that -- that the increases that we see over time in

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1 the -- in the foreclosure share do not proceed in a perfect
2 linear fashion. They occur in a zigzag fashion, and there's
3 some -- in fact, by some of the measures of foreclosure share,
4 it will -- you'll see it accelerating, right? And, of course,
5 those -- those increases that are occurring over time in a --
6 and not in a perfectly linear way, right, are contributing to
7 the estimate -- those sources of variation are contributing to
8 my estimate of the coefficient on foreclosure share.

9 So I disagree with his -- with his suggestion that --
10 just like his year fixed effects, that the inclusion of the time
11 trend was somehow zapping the ability of the foreclosure -- of
12 variation in the foreclosure share to make -- to make -- to
13 explain the foreclosure share estimate. Of course it is.

14 Q. Is use of a time trend variable standard?

15 A. Absolutely.

16 Q. And did including the time trend variable actually made it
17 -- make it harder for your regression to find a relationship
18 between foreclosure share and wage share?

19 A. It's complicated. You could say it makes it easier because
20 it's controlling for things that change, but, yes, it's also
21 making harder in that it's taking away certain sources of
22 variation in the foreclosure share from being able to contribute
23 by themselves.

24 THE COURT: Such as?

25 THE WITNESS: Well, such as those that are moving up in

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1 a perfect linear fashion. Any linear trend -- any perfectly
2 linear trends in a foreclosure share, right, would be -- would
3 be --

4 THE COURT: So, let's say --

5 THE WITNESS: -- captured by the time trend variable.

6 THE COURT: So the time trend variable might zap out
7 potentially extensions in the links of the lockup period, or
8 not, in the contract. So, in other words, if they changed the
9 contract from year to year to increase the sort of,
10 quote/unquote, locked-up period, would the time-share fixed
11 effect variable pull on that?

12 THE WITNESS: Well, you said time-share -- you said
13 time trend fixed effects, so those -- these are two
14 separate things.

15 THE COURT: I know they're two separate --

16 THE WITNESS: Let's deal with the time trend first.

17 THE COURT: Right.

18 THE WITNESS: All right? And, so, what we need to be
19 focussed on is how is that time trend variable correlated with
20 the foreclosure share over time.

21 THE COURT: Right.

22 THE WITNESS: Right? And, so, to the -- they are
23 correlated in part because you watch, the foreclosure share was
24 growing.

25 THE COURT: Right.

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1 THE WITNESS: But the key, Your Honor, is that it
2 wasn't growing in a perfectly linear fashion, right? It would
3 zig up, zig down, and then -- and then in some cases it would go
4 very high, it would go high around, remember, the Strikeforce
5 acquisition. So these nonlinear increases in the foreclosure
6 share, even in the presence of a time trend variable, are making
7 contributions to the foreclosure share coefficient.

8 THE COURT: Okay.

9 BY MR. CRAMER:

10 Q. All right. Let's talk about the argument that Dr. Topel
11 actually had in his reply to your supplemental expert report at
12 paragraph 28. He claims that your promotion spend variable had
13 no effect, just dropped out, for lack of sufficient variation.
14 Is he right?

15 A. He's not right.

16 Q. Why not?

17 A. So, when I introduced the promotion expenditure variable, I
18 did that in the context of the model that included the
19 pre-Strikeforce acquisition, Strikeforce database, right? And,
20 so, I pulled those databases together, and there were promotion
21 values for Zuffa and for Strikeforce in each year. And, so, he
22 testified yesterday that there was no variation in the promotion
23 variable within a year, and he was wrong. It does vary by year.

24 Now, what he did in his -- in his alternative
25 specification is he -- he eliminated the Strikeforce, which did

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1 eliminate the variation in promotional expenditures within the
2 year, and then he claimed that the model had no more variation.
3 Well, yes, I agree with him, if you eliminate the variation, you
4 eliminate the variation.

5 THE COURT: Because you're saying --

6 THE WITNESS: If you turn up the temperature --

7 THE COURT: Because you're saying the variation was
8 based upon the promoter, not based upon the --

9 THE WITNESS: Let me see.

10 THE COURT: -- the input from the promoter -- because
11 I --

12 THE WITNESS: Wait. Let me try --

13 (Court reporter admonishment.)

14 THE COURT: So help me -- yeah. So help me understand
15 whether -- if you're saying that he eliminated the variation by
16 removing Strikeforce, whether or not the promoter variable is
17 based upon the promoter or not, if that's what was the result of
18 the loss of the variation or if there's something else.

19 THE WITNESS: That -- that's what he did to eliminate
20 the variation. Your Honor, within a given year, there were only
21 two values for promotion. One was the Zuffa promotion spend,
22 and the other one was the Strikeforce promotion spend.

23 So, had he -- had he left my model alone and just
24 included the pre-Strikeforce acquisition data with -- with
25 Strikeforce observations in it, right, this problem would go

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1 away because then you'd have variation in the promotion variable
2 within a given year. But what he did is he -- is he struck the
3 pre-Strikeforce acquisition thereby eliminating it and thereby
4 he's right. He's right that when you eliminate variation in the
5 promotional spend, so that it's just one per year from Zuffa,
6 and you include a year fixed effects, of course there would be
7 no chance for the promotion variable to make any contribution.
8 But that's not what my model -- that's not how I tested
9 promotion. I tested it with the pre-Strikeforce acquisition
10 data included.

11 THE COURT: Because that's the only way to test
12 differences between Zuffa and another promoter?

13 THE WITNESS: Well, I'm interested, Your Honor, in
14 testing the special sauce theory. I want to make sure that I'm
15 controlling for everything in the regression that -- that Zuffa
16 could be doing that -- that might affect -- procompetitively
17 that might affect the wage share. I want to get that in there.
18 And I also want to keep -- to the extent I can, I want to keep
19 that -- those year fixed effects in because they're
20 statistically significant. They're important. They're
21 important in explaining movements in the wage share over time.

22 So, I can't bring in a promotion variable that doesn't
23 vary by year in the presence of those year-fixed effects, but
24 that's not what I did. I brought in a promotion variable that
25 does vary within a year. There was a Strikeforce observation in

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1 each and a Zuffa observation in each year. And when you run it
2 that way, the model doesn't crash as Dr. Topel asserts. You
3 have -- you have variation. So, I'll leave it at that.

4 BY MR. CRAMER:

5 Q. Dr. -- Mr. Isaacson used the following document, I'm going
6 to put it on the screen, it's JCCX70, Exhibit 4, Zuffa Event
7 Costs and Revenues in 2010. And he used this document to
8 suggest that you didn't control for the non-fighter event costs
9 as listed in this chart. Is he correct?

10 A. No, he's not correct.

11 Q. Why not?

12 A. In the very last specification I ran when Dr. Topel said,
13 no, no, no, it's not promotion, it's the kitchen sink, it's all
14 of Zuffa's non-fighter expenditures at a given event, I used
15 that data. And I tested whether the kitchen sink, when you
16 threw that in as a right-hand side variable, had any -- had
17 any -- could in any way upset the relationship on foreclosure.
18 And I want to make -- I want to make one other point, just --

19 THE COURT: And, so, then what happened?

20 THE WITNESS: Nothing happened.

21 THE COURT: Okay. All right.

22 THE WITNESS: Right, if you did it properly. Dr. Topel
23 went first, and what he did was he combined Zuffa with
24 Strikeforce data, but we notice that he -- he had carved out a
25 subset of the Strikeforce data when he brought the two databases

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1 together. And all we did -- Mr. Isaacson calls this the new
2 regression. It's not a new reaction. We just said, what
3 happens if you don't throw those out? That's data. Why are you
4 throwing out those data? We don't know why he threw them out.
5 It could have been a coding error for all we know, but all he
6 had to do was bring those back in and the effect on foreclosure
7 was maintained. And if I could, I'd make one other point here.

8 While it's true that my promotion spend variable for
9 Zuffa only shows up one time per year, my preferred way of doing
10 it, and we can get it into why I do it that way. When I -- when
11 I replicated Dr. Topel's model of the kitchen sink, that's event
12 specific, so that's showing up multiple times a year. So any
13 concern that he might have that -- that those effects have no
14 chance to contribute because of the inclusion of the year fixed
15 effects melts away.

16 THE COURT: Right.

17 THE WITNESS: Because now we have variation in this
18 special sauce variable. Right? That occurs at a higher
19 frequency --

20 THE COURT: Right.

21 THE WITNESS: -- than annually.

22 THE COURT: Okay.

23 THE WITNESS: Okay.

24 BY MR. CRAMER:

25 Q. Does the kitchen sink variable -- so you -- you said that

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1 you took Dr. Topel's regression and you added in the missing
2 data, and it worked. It showed this statistically significant
3 relationship that we've been talking about --

4 **A.** Correct.

5 Q. -- right?

6 What if you took all of the Strikeforce data out, you
7 didn't include incomplete data, what did -- what did that show?

8 **A.** It would still work. If you use Dr. Topel's all Zuffa
9 non-fighter event revenues, right, and you made that your
10 right-hand side data, and you just looked at Zuffa, just throw
11 out Strikeforce, my result on the foreclosure share is
12 preserved. And what that means, Your Honor, is that you can
13 bring in the kitchen sink, right, that captures all of Zuffa's
14 expenditures on an event-level basis. And so long as you either
15 bring in all of the Strikeforce data or throw it all away, the
16 results on the foreclosure share are preserved. The only way
17 that he was able to upset it was bringing in the -- a subset of
18 the Strikeforce data and we -- we don't -- we don't have any
19 understanding as to why that subset was chosen.

20 THE COURT: Okay. Thank you.

21 BY MR. CRAMER:

22 Q. All right. Let's talk about this 18-month window that you
23 used in computing foreclosure share. Mr. Isaacson asked you
24 about this window that looks nine months forward and nine months
25 backward. Can you just explain to the Court and to me what you

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1 did, Dr. Singer?

2 **A.** Sure.

3 I wanted to -- I wanted to create a -- a moving average
4 or rolling average, if you will, of all of the active fighters
5 in the relevant market at a given point in time. And I did that
6 because I didn't want the foreclosure share to be bouncing
7 around like wild. I wanted it to be a steady trend.

8 And the question was how to -- how to identify who is
9 active in the market. Now, as a starting place, I began with
10 the rank. So if you had a -- if you had a rank at the time that
11 I went to go do the measure of the foreclosure share, or the
12 market share, because as I testified, they're starting from the
13 same place, I want to know if you fought -- if I'm looking in,
14 say, March of 2012, I want to know if you fought around that
15 time. Because if you didn't fight around that time, you could
16 still have a rank, but you might not be active in the relevant
17 market. Right?

18 And, so, what I did was I said, if I'm looking in March
19 of 2012, let's look in the Sure Dog database nine months forward
20 and nine months backwards. And if I --

21 THE COURT: So from the date of the fight?

22 THE WITNESS: Well, it's -- it eventually gets attached
23 to a particular fight, that's correct, but I actually do it
24 every month. I update the foreclosure share metric every month.

25 THE COURT: No. But I'm saying, the nine month forward

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1 and the nine month back, is that focussed on the date of the
2 fight, the last fight?

3 THE WITNESS: Eventually it will get -- these will get
4 merged up to a particular event, that's correct, and I'll be
5 looking at who's fighting in the event. But I want to make sure
6 when I -- when I go to calculate Zuffa's share of all fighters
7 in the relevant input market, I want to make sure that I've --
8 that I've cast my net to include everybody who not only has a
9 rank, but who has also been active, right? And the way that you
10 get in the numerator is if you fought at a Zuffa event pursuant
11 to a contract that contained the three elements that we think
12 are consistent with exclusionary conduct, or potentially
13 exclusionary.

14 THE COURT: Okay.

15 THE WITNESS: If I could just say one other thing that
16 motivates the window. And there's nothing special about nine
17 months. And we've tried it -- we've tried it different ways and
18 it doesn't affect, but I just want to say -- I just want to say
19 that. Imagine if you drew a window that was three hours before
20 the event and three hours after the event, just for academic
21 purposes, right? What would happen? The only people -- the
22 only fighters in the relevant market would be the 20 fighters
23 who were featured --

24 THE COURT: Right.

25 THE WITNESS: -- on that day. So -- and so that

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1 intuitively made no sense to us. What we wanted to make sure
2 was to draw the window wide enough so as to -- so as to get as
3 reasonable a view or vantage on who is in, who is in this
4 market, who's active at the time.

5 THE COURT: Right.

6 BY MR. CRAMER:

7 Q. I believe you just said this, but did your use of this
8 window bias your computation of foreclosure share in any way?

9 A. Not in any way. I've tried it with -- I've tried it with
10 different variations in the window size and that does not have
11 an effect.

12 Q. And that's in your rebuttal report at paragraph 56 and 57.

13 All right. Let me ask you a hypothetical.

14 A. Okay.

15 Q. Let's say a fighter competes for Bellator in a bout in
16 February. He signs with Zuffa in March. He doesn't compete in
17 April at all. Does he count as foreclosed by Zuffa in April
18 even though he's locked up by Zuffa?

19 A. According to my method, he would not be. So I'm going to
20 assume that he fought for Bellator, I think you said, in
21 February. He signed an exclusive -- he signed an agreement,
22 Mr. Cramer, that contains these three -- these three elements,
23 right?

24 Q. Yes.

25 A. Okay. But he doesn't -- he doesn't fight in April, and

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1 we're trying to come up with the measure in April. How would
2 the code treat him?

3 Now, we know in our hearts that he is foreclosed, or
4 he's potentially foreclosed because he signed this agreement.
5 But because he hasn't fought yet for Zuffa he's going to be
6 treated as if he's not foreclosed by the way that I did it. And
7 I think -- I think Mr. Isaacson -- we could come up with
8 hypotheticals until -- until the cows come home. We could come
9 up with hypotheticals as to how it undercounts when a fighter is
10 actually foreclosed, but we don't treat him as being foreclosed.
11 And I think Mr. Isaacson -- I couldn't follow it, but I think he
12 was trying to come up with a hypothetical in which a fighter was
13 being treated as being foreclosed, but he wasn't really
14 foreclosed because of this timing issue.

15 And at the end of the day, Dr. Topel has never picked
16 up this -- this issue and measured what the effect is. And I
17 haven't either, and I'm of the opinion that to the extent there
18 are any errors in one direction of overcounting, they're going
19 to be offset by errors in undercounting. But let me tell you
20 this. We will never have an error -- on a day of a fight we
21 will never -- someone who fought for Zuffa pursuant to a
22 contract, there's no way that we will misclassify that person on
23 that day. If that person is fighting pursuant to an
24 exclusionary conduct, we will treat him as being foreclosed, and
25 if he's not, we won't.

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1 THE COURT: Okay.

2 BY MR. CRAMER:

3 Q. Dr. Topel said that he has not come across articles using
4 wage share as a dependent variable in a regression, similar to
5 what you did. Have you, in your research, found such articles?

6 A. Yes, I have.

7 Q. And those are listed -- we don't need to go through them
8 all -- in his rebuttal report at paragraph 104.

9 And you also came across multiple articles using wage
10 share in sports, right?

11 A. Yes. In fact, wage share was the common metric with which
12 sports economists assessed changes in restrictions on labor
13 market mobility on worker outcomes, or athlete outcomes. This
14 is the lens of an analysis, and this is exactly what I'm doing
15 here.

16 Q. All right. You just mentioned restrictions on athlete
17 mobility. I'd like to show you slide 12 from -- put it up.
18 This is from Dr. Topel's direct. It's paragraph 200 from his
19 report. And I'd just like to draw your attention to the
20 bracketed -- in my little blue bracket part of this where he
21 says, "In the absence of such restrictions" -- talking about
22 restrictions in contracts -- "promoters would not capture the
23 full value of their promotional investments and therefore would
24 do less promotion."

25 Do you see that?

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1 In other words, he's implying here, as he does in his
2 reports, that the exclusive contracts are procompetitive because
3 they're output enhancing. If we got rid of the contracts, he's
4 saying that output would fall. Before I ask you whether this
5 makes sense, I want to show you a chart from your report. And
6 this -- I'd like you to describe what this chart shows.

7 **A.** All right. And so, Your Honor, in my monopoly section,
8 which we haven't had much time to talk about because we decided
9 to focus my direct on the monopsony, there's a section entitled
10 "Direct Evidence of Monopoly Power." And what I did was I
11 charted for a given relevant input market. This is the ranked
12 market. So now I'm looking at events.

13 MR. ISAACSON: I apologize for interrupting. This
14 is -- we can't find this at the page number matching to what you
15 previously gave us as the Singer deck.

16 MR. CRAMER: The -- oh, this wasn't in -- this is --
17 this wasn't in the deck that we gave you. This was for
18 rebuttal.

19 MR. ISAACSON: Oh. Okay. This is a new -- do you have
20 copies --

21 THE COURT: This is a rebuttal report?

22 MR. CRAMER: This is in his first report, figure 4B.
23 It's actually a simplification of what's in his report at 4B.
24 4B had some other lines that we could talk about, but there's
25 only one line that we wanted to focus on, so -- but it's in his

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1 first report, figure 4B.

2 THE WITNESS: Right. And so, Your Honor, what I --
3 what I did was I charted the number of events across all
4 promotions -- not just Zuffa, but non-Zuffa promotions -- that
5 featured a fighter who appeared in my ranked market between
6 2000 -- at least one fighter appeared in my ranked market
7 between 2001 and 2016. And I went through event by event in
8 Sure Dog, and I -- and then I combined that with the ranking
9 data. And I want to see how many events were being put on in
10 North America that featured a ranked fighter over -- over the
11 course of the study period.

12 And what I found was that while it was true that
13 Zuffa's events featuring these -- these highly ranked or --
14 sorry -- just ranked fighters was increasing over the study
15 period, no doubt, it wasn't increasing fast enough to offset the
16 decrease in non-Zuffa events that featured ranked fighters. In
17 other words, as the foreclosure share grew over the study
18 period, what we saw was the diminution in output across the
19 entire market. And this is the kind -- I offer this up as
20 direct evidence of Zuffa's monopoly power because what happens
21 in a monopolized market is that output is contracted as prices
22 rise, and that's what happened here.

23 Q. What happened in other sports when restrictions like the
24 reserve clause in baseball were lifted to output?

25 A. Right. In other sports -- this is, again, restate

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1 Dr. Topel's prediction of what would happen here. Dr. Topel
2 says if you don't let Zuffa lock these fighters up into
3 long-term exclusive contracts that restrict labor mobility, that
4 Zuffa's going to stop investing in promotion, output's going to
5 fall, and other list of -- a parade of horrors are going to
6 happen. Dogs and cats are going to be friends.

7 And, so, what I want to point out is that this
8 characterization is completely at odds with what has happened --
9 what the economic literature has shown to have happened in other
10 sports around the time that restrictions on labor mobility were
11 relaxed. Now I went through in my report, study after study,
12 but the general flavor is that when restrictions were relaxed,
13 demand for the sport exploded, output increased, wages
14 increased.

15 And, so -- so, what he wants you to believe, Your
16 Honor, is that this sport would somehow be different, that this
17 parade of horrors is going to happen here if you remove what
18 the -- what is equivalent to the reserve clause. If you remove
19 that reserve clause here, the sky is going to fall. Never mind
20 the fact that in every other sport where something like the
21 reserve clause has been removed output has increased.

22 I just want to lay that -- that contradiction on the
23 board for you.

24 MR. CRAMER: And this is a good preview for Friday
25 where we'll hear from Professor Zimbalist who elaborates on this

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1 issue. He's a sports economist and obviously an expert in
2 various different sports and what happened in those sports when
3 restrictions on mobility were removed.

4 I am almost done, Your Honor.

5 BY MR. CRAMER:

6 Q. Two further questions. Mr. Isaacson argued that there was
7 no evidence that the challenged conduct had any effect on other
8 promoter's ability to compete. And when you were given an
9 opportunity to respond, Dr. Singer, you pointed to record
10 evidence, there's Deutsche Bank documents, evidence from
11 Scott Coker who said he was impaired in his ability to compete
12 and --

13 THE COURT: So is there a question there, Mr. Cramer?

14 MR. CRAMER: Yes. Yes.

15 BY MR. CRAMER:

16 Q. One more -- well, Mr. Isaacson made an argument about this
17 so I --

18 THE COURT: Well, I understand that. You're --

19 MR. CRAMER: Yeah. Yeah.

20 THE COURT: -- making an equally compelling argument as
21 an attorney back, but I just wanted to ask if there were
22 questions to Dr. Singer.

23 MR. CRAMER: Yes. There -- you are -- you are right.
24 There is a question. One more.

25 BY MR. CRAMER:

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1 Q. What happened to the number of promoters with headline
2 fighters, fighters in the top, the ones that are generating the
3 majority of the value, when -- from 2010 to 2016? And I'm going
4 to put on your slide 33 from your direct testimony.

5 A. Okay. So as you can see, Your Honor, remember, we have two
6 economic actors in the --

7 THE COURT: Right.

8 THE WITNESS: -- in the headliner input market. You
9 have the buyers, which are the promotions, and the sellers,
10 which are the fighters themselves. And -- and what I tracked
11 was the number of unique promoters by year. And what you see is
12 a shrinkage. It went from 34 unique promoters, in 2010, that
13 had at least one fighter in the top 15, down to only six by
14 2016. Right?

15 And, so, what Mr. Isaacson is trying to suggest is
16 there was no rival impairment here, right, rivals are doing --
17 are doing wonderful. Well, I don't doubt that rivals are --
18 some rivals are just getting by, but to the extent wonderful is
19 defined as showcasing headliners, rivals are being wiped out.

20 THE COURT: Let me ask you this other question that
21 came up, which was this argument that somehow if you look at the
22 compensation for Strikeforce fighters and then for Bellator
23 fighters, that they were unaffected by the foreclosure share or
24 Zuffa's foreclosure share and, therefore, they represent actual
25 competitive compensation.

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1 THE WITNESS: Dr. Topel misstated my -- my test and my
2 conclusions, so let me -- let me try to clear up the confusion.

3 I told you that I -- I computed a regression of
4 Strikeforce wage share on Zuffa's foreclosure share. He
5 suggested that the regression was Strikeforce's wage on Zuffa's
6 foreclosure share. And I was -- I was squirming there, but I
7 now have the opportunity to tell you that is not the test that I
8 ran. The test that I ran is that Strikeforce's wage share was
9 not dependent on Zuffa's foreclosure share. That gave me
10 confidence to use Strikeforce's wage share as -- as -- as a
11 useful benchmark and also gave me confidence -- we had this
12 debate about -- about what to do with the foreclosure share when
13 you pool the data together, the Strikeforce observations and the
14 Zuffa observations. But what's important --

15 THE COURT: And you could only do that, though, for
16 Strikeforce; you couldn't do it for Bellator?

17 THE WITNESS: I didn't have the kind of granular
18 competition data for Strikeforce --

19 MR. CRAMER: For Bellator.

20 THE WITNESS: I'm sorry. For Bellator.

21 THE COURT: For Bellator. So remind me then, the wage
22 share for Strikeforce at the time was what percentage?

23 THE WITNESS: I think this was in the 60s, 63 percent.

24 THE COURT: Okay. And was the compensation, the
25 absolute compensation, also different between --

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1 THE WITNESS: Sure.

2 THE COURT: -- Zuffa and Strikeforce?

3 And what was the differences in those numbers? Do you
4 recall?

5 THE WITNESS: I don't have them memorized, but I will
6 grant that the level of compensation was lower for Strikeforce
7 at the time than for -- than for Zuffa. But, remember, if what
8 Strike- -- if what -- think about the theory of harm here. If
9 what Zuffa was doing was impairing Strikeforce's ability to
10 compete effectively by depriving it of a must-have input, namely
11 highly ranked fighters, then that would have the effect of
12 depressing Strikeforce's revenues and through the wage share
13 that they elected, 63 percent, that would translate into a lower
14 wage.

15 THE COURT: Right.

16 THE WITNESS: Right. And so that's why I'm not
17 comfortable using Strikeforce's wage as the -- as the
18 competitive benchmark because that wage was potentially
19 contaminated by the challenged conduct. What I -- what I ruled
20 out was the possibility that Strikeforce's wage share was
21 contaminated by the challenged conduct, because I tested that
22 empirically. And that gave me confidence that that is an
23 untainted competitive benchmark, in Dr. Topel's words, a natural
24 candidate for a benchmark.

25 THE COURT: And why -- and why did -- so why would the

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1 compensation be affected by the foreclosure share, but not the
2 wage share?

3 THE WITNESS: Oh, I -- I -- I tried -- I'll try it --
4 maybe I'll try it a different way, but I think that what happens
5 is that we know that the wage share was set independent of the
6 conduct. We know that empirically. So -- so, I have confidence
7 in thinking that Strikeforce says to itself, in our business
8 model, we're going to give our fighters about 60 percent of the
9 event revenues. All right?

10 And, now, what happens is, to the extent that the
11 conduct suppresses Strikeforce's event revenues, right, they
12 can't charge as much, they can't -- they can't sell as many
13 tickets, they can't put as many butts in chairs because they've
14 been deprived of this key must-have input, the high -- the
15 ranked fighters. And, so, as a result, to the extent that the
16 conduct is pushing -- is holding down their revenues, it's also
17 holding down their wages.

18 We also talked, too, about that the pool is related
19 but -- and I'm repeating, but that pool of Strikeforce fighters
20 just wasn't as valuable, of course, given that it had lower --
21 lower ranked -- relatively lower ranked fighters than did Zuffa,
22 right? And, so, when you take that same set of pool and you
23 move them into the -- into the Zuffa pool, you are combining it
24 with more highly ranked and, so, their MRPs go up --

25 THE COURT: Right.

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1 THE WITNESS: -- because of this network effect.

2 THE COURT: Got it.

3 BY MR. CRAMER:

4 Q. One final question, Dr. Singer. How does your model account
5 for increases in revenues in Mixed Martial Arts, at the UFC in
6 particular, due to the increasing popularity of the sport and
7 the increasing popularity of the fighters who compete in that
8 sport?

9 A. It accounts for it by using the wage share as the dependent
10 variable.

11 THE COURT: In what way?

12 THE WITNESS: Because we know that the wage share is
13 controlling for changes in events that occur over time. And
14 we -- we also know that those changes, for Dr. Topel's testimony
15 that was put on the board, are reflective of increases in the
16 marginal revenue product of the fighters themselves. So you
17 have to control for -- for the event revenues somehow. When
18 making a prediction of what the conduct did to fighters, you
19 must control for the event revenues. And it is my opinion that
20 the traditional way to do it in the sports economics literature
21 is via the wage share.

22 THE COURT: Okay. Thank you.

23 MR. CRAMER: That's all the questions I have,
24 Your Honor, unless you have anything else.

25 THE COURT: No. I don't have anything else. Thank

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1 you.

2 MR. CRAMER: Thank you.

3 THE COURT: Thank you, Dr. Singer.

4 MR. ISAACSON: Your Honor, may I have a very short time
5 for clarifying questions, particularly --

6 THE COURT: No. No. I didn't allow it for Mr. Cramer.
7 I'm not going to allow it for -- for Dr. Topel. I'm not going
8 to allow it for Dr. Singer. This is meant to be rebuttal
9 testimony. I don't think there's anything else that we need to
10 do.

11 MR. ISAACSON: Well, Your Honor, that chart, which was
12 shown for the first time, which, as counsel said, was not -- was
13 an excerpt of something from his report --

14 THE COURT: Well, if you want to -- so here's what I
15 will tell you. If you want to argue about whether or not that I
16 should consider the chart or not, that's fine.

17 MR. ISAACSON: I think you should understand --

18 THE COURT: But we don't need to have further questions
19 from Dr. Singer. You can just talk about whether or not I
20 should include the chart or not.

21 MR. ISAACSON: It's -- I -- I would like you to
22 understand what was left out. I don't care if you consider it.
23 I would like you to understand what was left out.

24 THE COURT: No. I'm not going to allow that. I didn't
25 allow it, again, for Mr. Cramer for Dr. Topel. So, we'll end

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1 with Dr. Singer there. Thank you.

2 MR. CRAMER: Thank you, Your Honor.

3 THE COURT: All right. We will take our lunch break
4 now and then we'll come back. I don't know that we have
5 anything else except for housekeeping. We have to work out some
6 issues, I think. Is there anything else we need to do besides
7 some housekeeping issues today when we come back from lunch?

8 Mr. Cramer? Mr. Isaacson?

9 MR. CRAMER: No, Your Honor. After lunch we have some
10 things we want to put into the record really answering your
11 questions.

12 THE COURT: So one of the things I do want to make sure
13 you all talk about is, to extent that there were things that
14 were shown that are not attached to the reports, that those get
15 admitted as part of the record, Mr. Cramer, Mr. Isaacson. And
16 then we'll go over the remainder of the schedule for this week
17 and then the -- the hearing schedules later.

18 So, is there anything else then?

19 MR. CRAMER: That's all, Your Honor.

20 THE COURT: Mr. Isaacson?

21 MR. ISAACSON: No. I agree. Nothing else.

22 THE COURT: Okay. All right. Thank you. We'll be
23 adjourned.

24 (Recess taken at 12:51 p.m.)

25 (Resumed at 2:16 p.m.)

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1 THE COURT: Please be seated.

2 All right. We're back on the record here. I'm going
3 to talk a little bit about the schedule for Friday. So, we have
4 the two experts for Friday coming. And initially you guys had
5 said two and a half hours. I don't know that we need that much
6 time. So, tell me what you think you'll need to do with respect
7 to experts. Mr. Cramer, I'll start with you.

8 MR. CRAMER: I'm going to allow Mr. Silverman to
9 address this issue since he's handling Professor Zimbalist.

10 THE COURT: Okay.

11 MR. SILVERMAN: Good afternoon, Your Honor.

12 So, I actually wanted to ask you what you thought would
13 be helpful to hear from Mr. Zimbalist on so we could focus our
14 presentation. We were planning originally in two and a half
15 hours to go through most of his opinions and summarize them, in
16 particular looking at his opinions on the development of free
17 agency in all of the league sports and his analysis of how
18 boxing has changed over time and how that affected both athlete
19 compensation in those sports and also output -- some of the
20 topics that we also talked about today and previewed. We were
21 also hoping to go over his --

22 THE COURT: Well, we don't need to summarize all of his
23 opinion.

24 MR. SILVERMAN: Sure.

25 THE COURT: The only thing that seems to me that might

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1 be potentially relevant would be the degree to which he thinks
2 the different markets that he's looked at, apart from the MMA
3 market, are analogous to the MMA market at different stages of
4 their development.

5 MR. SILVERMAN: Okay.

6 THE COURT: I don't see that that takes that long.

7 MR. SILVERMAN: Sure.

8 THE COURT: But it seems to me one of the issue
9 where -- I don't know if there was necessarily disagreement, but
10 there certainly was discussion with Dr. Singer and Dr. Topel
11 related to the reasonableness of using comparable professional
12 markets. So it would be helpful to have Professor Zimbalist's
13 opinion about that.

14 MR. SILVERMAN: Absolutely.

15 THE COURT: Particularly as it relates to the issue of
16 restrictive clauses or free agency, whatever you want -- reserve
17 clause, however we describe it, essentially going from a
18 circumstance where there are more restrictive contracts to less
19 restrictive contracts. I don't see how that is more than an
20 hour.

21 MR. SILVERMAN: Sure.

22 THE COURT: Is there anything else you think after
23 you've heard this testimony that would be helpful for me to
24 consider? Because I don't know that there's anything else
25 besides that, honestly.

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1 MR. SILVERMAN: So the only other thing and this is
2 related is that -- that Professor Zimbalist responds to some of
3 the procompetitive efficiency defenses that have been offered by
4 Dr. Topel that were discussed a little bit today. That kind of
5 overlaps because a lot of his responses to those efficiency
6 defenses refer to what happened in these other yardstick sports.

7 THE COURT: So that seems like it would be part of the
8 same discussion, right.

9 MR. SILVERMAN: Sure. Yeah.

10 THE COURT: So part of the discussion would be about to
11 what extent they're analogous. There was one question I think
12 or issue that was raised by Dr. Topel as relates to unions or
13 not, but boxing's not unionized the way that, for example, the
14 other professions were.

15 MR. SILVERMAN: Right.

16 THE COURT: Professor Zimbalist will talk about that.
17 So talking about the extent to which they were restrictive
18 contracts, how that might have affected the number of events and
19 the competition, those would be things that Professor Zimbalist
20 could talk about.

21 MR. SILVERMAN: Okay.

22 THE COURT: But they're related to one another.

23 MR. SILVERMAN: Yes.

24 THE COURT: And it doesn't seem to me that it takes
25 more than an hour, hour and a half and 15 minutes to do that.

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1 MR. SILVERMAN: I'm sure we can stick to that time
2 frame, yeah.

3 THE COURT: So -- or at most an hour and a half
4 because, again, I think there's been a fair amount of testimony
5 already, and a lot of this -- the court's decision is going to
6 focus on the modelling and the purpose of the model. And so
7 Professor Zimbalist offers I think a very unique, but very small
8 part of that which really relates to the reasonableness of the
9 comparisons and what happens in the context of procompetitive or
10 anticompetitive effect with respect to these restrictive
11 contracts and the removal of restrictive clauses.

12 MR. SILVERMAN: That makes sense. Absolutely.

13 THE COURT: Okay. So -- all right. Thank you.

14 MR. SILVERMAN: You're welcome. Thank you, Your Honor.

15 THE COURT: All right. Mr. Isaacson, are you doing --

16 MR. ISAACSON: I'm not doing --

17 THE COURT: Professor --

18 MR. ISAACSON: -- professor Blair, but my colleague who
19 is doing it isn't here. So I will speak for him. But if you
20 want an hour to an hour and a half, we will -- that's what we
21 will do.

22 THE COURT: Okay. All right. So -- and Professor
23 Blair would talk about?

24 MR. ISAACSON: Yes.

25 THE COURT: What would he talk about?

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1 MR. ISAACSON: So we will talk about the comparators as
2 you said --

3 THE COURT: I just want to make sure he's going to talk
4 about the same things that Professor Zimbalist will talk about.
5 There's nothing different that you think he needs to talk about
6 in this context.

7 MR. ISAACSON: His report -- I mean, the comparators
8 are being used here with wage share. So Professor Blair had
9 something to say about that in his report, and so we would
10 include that because this isn't -- this -- you know, yardsticks
11 and wage share are a unique combination. And so he would he
12 would address both. But that's what's in his reports.

13 THE COURT: Okay. All right. Thank you.

14 So looking at the schedule then here.

15 (Court conferring with court reporter.)

16 THE COURT: All right. So what we'll do is we'll take
17 Professor Zimbalist, and we'll start at 8:30 on Friday.
18 We'll ...

19 And we will go 8:30 to 9:45, and then we'll come back.
20 I have another engagement, and then we'll come back then at
21 11:30 and go until 3 or 3:30. And so I'm going to allot the
22 time accordingly. So that amounts about to two and a half hours
23 per side, but I'll give -- it's going to be two hours per side
24 per witness, so one hour, one hour, one hour, one hour. So you
25 each will have one hour for each of the witnesses, so a total of

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1 four hours.

2 Any questions about that?

3 MR. CRAMER: No, Your Honor.

4 MR. ISAACSON: I just alert to one issue with Professor
5 Blair. He has an eye condition, macular degeneration. So if
6 you're trying to show him documents, you have to read them to
7 him. So it goes a little slower.

8 THE COURT: Okay. That's fine. Are there a lot of
9 documents you would expect that he'd have to read?

10 MR. ISAACSON: No, but we're not in charge of the
11 cross-examination.

12 THE COURT: Okay. Who's doing the cross-examination?
13 And Friday, Mr. Silverman, right, you'll be seated
14 where Mr. Cramer is, right. So you won't have to do this whole
15 circuit every time.

16 MR. SILVERMAN: Yes, Your Honor. That will be the
17 plan.

18 Yes. So for his cross -- for Dr. Blair's
19 cross-examination, well, if he agrees with all of my questions,
20 then we won't need much -- that many documents at all. But I
21 imagine that we may need to impeach with his deposition quite a
22 bit. And I think the easiest way to do that, as I did at his
23 deposition with documents, was I read him the materials. So my
24 plan is to -- to put the excerpts of his deposition up on the
25 screen and just read them aloud, if that will work.

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1 THE COURT: Okay. That's fine.

2 MR. SILVERMAN: But I think -- I think it may be a
3 little bit slower than normal, particularly if you -- if the
4 court and if Dr. Blair are going to want the full context for
5 deposition excerpts.

6 THE COURT: Okay. Well, we'll see how that goes then
7 in the context of his testimony.

8 MR. SILVERMAN: Okay.

9 THE COURT: But I appreciate that information.

10 MR. SILVERMAN: Thank you. You're welcome.

11 THE COURT: All right then. Is there anything else
12 that we need to address, Mr. Cramer?

13 MR. CRAMER: Your Honor, just three short things.
14 We're going to prepare for Your Honor a list of exhibits to
15 admit. We haven't done that yet. We've been busy.

16 THE COURT: So the "we" would that be both parties?
17 Right. Because I don't know if the "we" means just this side of
18 the room or if the "we" means all sides.

19 MR. ISAACSON: Yes.

20 MR. CRAMER: Yeah, we'll work together to do that. We
21 have the day off tomorrow. So, perhaps, it will be -- I know
22 Zuffa has some already that we've already agreed to, but we'll
23 come up with a consolidated list.

24 And then the second thing I was going to say is Your
25 Honor has asked for just a packet of everything that was shown

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1 to the Court either in a slide or on the ELMO. I understand
2 that not all of that is an exhibit to admit. Some of them are
3 just demonstratives, but Your Honor will get a package from us
4 of all of the things that we've shown to you.

5 THE COURT: That's fine.

6 MR. CRAMER: Some of will be exhibits. Some of them
7 were, we understand, demonstratives.

8 And then the last point I just wanted to raise is just
9 on the ground rules here. Last night we got three new
10 regressions. We just want an understanding that the record is
11 closed at this point. We're not going to get new regressions
12 from Dr. Blair, Dr. Topel, or Professor Oyer from Zuffa. And I
13 just -- we just want to understand the ground rules.

14 THE COURT: Well, I think you understand the ground
15 rules. What you're asking me to do is direct them not to
16 produce them. If you want to ask me to direct them not to
17 produce them, you should ask me to direct them not to produce
18 them.

19 MR. ISAACSON: Everybody I have who can run a
20 regression is at the airport.

21 THE COURT: Okay.

22 MR. ISAACSON: So I am not -- you will get no new
23 regressions.

24 MR. CRAMER: Well, I just mean between now and -- well,
25 Professor Manning and Professor Oyer are going to be testifying

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1 in September. And we --

2 THE COURT: Well, no, I don't expect there would be any
3 new regressions between now and then.

4 MR. CRAMER: Okay. Thank you.

5 THE COURT: And it's not even necessarily clear to me
6 that I'll need Professor Manning and Professor Oyer for further
7 testimony, honestly. It depends upon what happens with the
8 professors tomorrow, and also the person who I do want to hear
9 from is Mr. Silva. So that to me at this point may be more
10 significant. I don't expect that there would be any further
11 regressions from these other professors.

12 MR. CRAMER: Professor Manning would be happy to hear
13 that. There's a British Airways strike and he's coming from
14 London. We're having trouble arranging for his flights here. I
15 think we've gotten something secured. But as soon as Your Honor
16 makes that decision, we will let him know.

17 THE COURT: Okay.

18 MR. CRAMER: Thank you.

19 THE COURT: Yes, because, I mean, I'll -- I'm likely to
20 make that decision after the hearing on Friday. And that leads
21 me to another -- I'm sorry. You had other issues, Mr. Cramer.

22 MR. CRAMER: No, that was it. Thank you, Your Honor.

23 THE COURT: All right.

24 Mr. Isaacson.

25 MR. ISAACSON: I was just going to say with respect to

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1 Professor Manning as well our witness, Dr. Oyer, Professor
2 Manning actually sets forth specific criteria for when a wage
3 share should be used. So I do think it's valuable to hear from
4 Dr. Oyer and Dr. Manning by the Court. Because there are
5 specific criteria that their own expert is saying should be met.
6 I think the Court should be hearing that.

7 THE COURT: Okay. Well, the question is if -- why
8 would I necessarily -- if you want to make that argument, you've
9 made the argument to me in the briefs. I can read the reports.
10 Is he going to say something different than what he's already
11 said? I don't know. And what I'm saying to you is that what I
12 feel I needed the most explanations for were the main models
13 that were at issue or the main models at issue in this case,
14 which is Dr. Singer's model. And I don't know that there's more
15 information that I would need with respect to that that's going
16 to be anything other than some argument about what -- when it
17 should or shouldn't be used.

18 I think Dr. Topel talked about that as well. So I
19 don't know that it wouldn't be redundant of what Dr. Topel
20 talked about. He talked about when he thought it should or
21 shouldn't be used. So I'm not sure what Professor Manning adds
22 to the discussion that's already been had with respect to
23 Dr. Singer and Dr. Topel, Mr. Isaacson, because they both talked
24 about it.

25 MR. ISAACSON: Right.

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1 THE COURT: There are articles that they talked about
2 it and when it should be used. And so I don't know why I would
3 hear more testimony about that if I've already had testimony
4 about that from experts from both sides.

5 MR. CRAMER: And the criteria that he's talking about
6 are all laid out in the reports. There's a discussion back and
7 forth.

8 MR. ISAACSON: So what I was about to say, so as I've
9 understood this hearing so far it's been so -- principally so
10 the Court can ask questions about the major topics that we've
11 been advancing. And what I'm saying is I think those gentlemen
12 have major topics. And if the court doesn't have any questions
13 for them, that's one thing, but I just wanted to be clear I
14 don't think these are peripheral witnesses. I think they are
15 important witnesses.

16 And -- and the hearing --

17 THE COURT: They're important because -- so, in other
18 words, are they going to go over matter that Drs. Topel and
19 Dr. Singer went over? Because I received certainly from these
20 two experts, I think, the respective parties' positions.
21 Dr. Topel was very explicit, right. He thought that the wage
22 share shouldn't be used and why it shouldn't be used. And so
23 the question is what do these experts add to the position of the
24 parties from the literature. I'm not saying that they're not
25 going to talk about relevant topics, Mr. Isaacson. But there

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1 was actually a fairly sort of robust and diverse conversation
2 that was had as it relates to Dr. Topel and Dr. Singer about it.

3 So, I don't know that I need more from these experts,
4 and that's why I'm asking. If they're simply going to repeat,
5 for example, that we don't think that wage share should be used
6 in this circumstance or we do think it should be used, unless
7 they're saying something that's completely different than what
8 is in their written material which I don't think they would be,
9 I don't know why we would have them --

10 MR. ISAACSON: Right. I --

11 THE COURT: -- in this case. And that's why I was
12 saying that.

13 In the context of the regressions, it's helpful, for
14 example, to ask Drs. Topel and Dr. Singer how did you make this
15 decision about this variable, why did you run this regression.
16 And we're now moving to witness who have a very focussed aspect
17 to the case, and they're only relevant from my standpoint to
18 certain parts of the model.

19 So the question then becomes in terms of efficiency is
20 it efficient to have them, right, if they're simply going to be
21 reiterating the arguments that have already been made from both
22 experts in terms of the report.

23 MR. ISAACSON: No, they wouldn't be merely reiterating
24 the arguments. There are points being made by Dr. Oyer that
25 have not been made by Dr. Topel or where Dr. Oyer was the lead

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1 witness. Now, whether this is of use for you to hear is up to
2 you. It is in the reports. I mean, that -- I can't disagree
3 with that. But some of it is theory -- some of it is
4 theoretical, but some of it is -- involves the actual model.
5 Dr. Oyer is the one -- as Dr. Topel says, Dr. Oyer's the one who
6 dealt with this win flag issue. So things were said about that
7 where Dr. Oyer was the principal witness.

8 And it's in the reports, but I don't want to -- I don't
9 want to have this hearing not go forward and then we say in
10 future -- I don't know what we're going to be doing, but we
11 argue about this in the future and the Court hasn't had the
12 opportunity to address any questions it might have.

13 THE COURT: Right. Well, I appreciate that.

14 As I said, I haven't made a final decision about that.
15 That's why I asked you all for your input. I'll go back and
16 look at the reports, but since you had said, Mr. Isaacson, I
17 don't expect any future witness are going to be running
18 regressions, that to me then suggests that part of this
19 testimony is going to be about potential sort of economic
20 standards and approaches, which I can read about. I don't need
21 witnesses to tell me that.

22 And so the purpose of the evidentiary hearing was
23 really to address some of the questions about the variables, how
24 they were used, why certain regressions were run, what does it
25 mean that they were significant in this context or not,

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1 explaining what the revenue weighting was as best they could to
2 a layperson. I don't know that I hear from you that that type
3 of technical explanation is going to occur with these witnesses.

4 So it's not to say that I couldn't take from the
5 witness's information from their reports, but it is to say that
6 I'm not sure that a hearing's necessary if I can essentially
7 glean from the written material what they would say.

8 And it's not explaining technical aspects to it. Now,
9 you've said that there's maybe a technical aspect to the win
10 flag. I have to say I don't know that that's -- honestly that
11 that's persuasive one way or another, one particular variable
12 which I don't actually find to be that dispositive as it relates
13 to the overall model. So it would have to be more than that in
14 order for me to find that they -- they were necessary in that
15 regard.

16 But I'm not making a final decision. That's why I
17 wanted to ask you both about whether or not you thought they
18 would contribute, and if their contributions are going to be
19 largely based upon what they've stated, that's fine.

20 MR. ISAACSON: And if I may, it's because -- you know,
21 one reason you may have that feeling is because you've only
22 heard from Dr. Singer about that and --

23 THE COURT: No, I heard from Dr. Topel about it, too.

24 MR. ISAACSON: No, he -- he touched on it, yes, but he
25 was not the principal witness on that. His reports mention it,

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1 but it's Dr. Oyer's reports that really going into that. And so
2 when Dr. Singer says in rebuttal, you know, what he has to say
3 about that, it's Dr. Oyer who addresses that.

4 MR. CRAMER: Here's the problem with that. The reason
5 why I didn't object when Dr. Topel raised the win flag issue was
6 because Dr. Singer's here. He can again his model. Professor
7 Manning doesn't address the win flag issue. Professor Manning
8 addresses wage share. And that's it.

9 THE COURT: So is there anything that you expect that
10 Professor Oyer's going to talk about that wasn't addressed by
11 Dr. Singer? I thought Dr. Singer explained fairly clearly what
12 his position on the win flag issue was.

13 MR. CRAMER: My only point is if we have Professor Oyer
14 spend 45 minutes discussing the win flag, Dr. Singer won't be
15 here.

16 THE COURT: Trust me, he will not be spending that much
17 time talking about the win flag. Okay. So that's not what's
18 going to happen. And, look, and I want to be fair because the
19 reality of it is, as I've explained, it's the plaintiffs' model
20 that has to survive scrutiny. And so if there are issues that
21 are raised by the plaintiffs' model, I think it's fair to allow
22 them to be raised, Mr. Cramer.

23 So if Mr. Isaacson thinks that that's relevant, I'm not
24 saying that I agree with that, but I'm just saying that they can
25 make the argument. The only question for me is whether or not

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1 it's an argument that I need that type of testimony regarding,
2 and we'll see about that. And I'll go back and look at the
3 reports and see if there's something else that they can add.

4 MR. ISAACSON: I think generally when you read those
5 reports you'll find them kind of technical.

6 THE COURT: I don't know we had some pretty technical
7 conversations in the last few days. So I don't know --

8 MR. ISAACSON: I --

9 THE COURT: -- if these are more technical than what
10 we've talked about.

11 MR. CRAMER: I think Professor Manning's is pretty
12 straightforward. So, I don't know that it's all that technical.
13 There's just a little bit of asymmetry because we'll have
14 Professor Manning talk about wage share and then Professor Oyer
15 will talk about and also win flag. And we won't have anybody
16 talk about --

17 THE COURT: I have full confidence, Mr. Cramer, that
18 you will be able to adequately address that.

19 MR. CRAMER: Okay. Thank you, Your Honor.

20 MR. DAVIS: Your Honor, just by way of completeness,
21 there is one other issue that Dr. Manning addresses, I just want
22 to make sure the record is clear, which is the endogeneity issue
23 in Dr. Topel's regression. That was covered today by Dr.
24 Singer. So it's not a reason to have that second phase, but I
25 just want to be clear because I'll actually be -- if it occurs,

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1 I would be the one doing the direct of Dr. Manning and the cross
2 of Dr. Oyer.

3 THE COURT: Okay. Okay.

4 MR. ISAACSON: And with regards to this week, the --
5 Ms. Grigsby should address this. There was the motion pending
6 with relation to the Golden Boy comparison. And -- and then she
7 can also tell you about Mr. Silva's -- updates on Mr. Silva if
8 you want.

9 THE COURT: Okay. So ...

10 MR. ISAACSON: And then I have one other matter --

11 THE COURT: And so is the Golden Boy information going
12 to be part of the Friday testimony?

13 MR. SILVERMAN: Sorry, Your Honor. I'll try to fix
14 this on Friday.

15 So, Your Honor, Golden Boy is the basis for
16 Dr. Zimbalist's calculation of boxing's wage share. We don't
17 think there's any big issue with that, but Zuffa has filed --

18 THE COURT: So let me ask a question, Mr. Silverman.
19 So is the information as relates to being unsealed, is that part
20 of what he's going to talk about? The sealed information, is
21 that part of the basis for his calculation?

22 MR. SILVERMAN: Dr. Zimbalist -- the data that
23 Dr. Zimbalist relies on is not confidential, but the data that
24 Dr. Blair relies on I think is still marked confidential.

25 And so the dispute here is that Zuffa's filed a Daubert

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1 motion to exclude Dr. Zimbalist's opinion on boxing's wage share
2 because they believe that the data that he's relied on is
3 unreliable. We don't think that's really an issue here. So
4 that's their argument to make, honestly.

5 THE COURT: Okay.

6 MS. GRIGSBY: Yeah, Your Honor. Just so it's clear,
7 this is not with -- with respect to Dr. Zimbalist, this is not
8 an issue of confidentiality. It's an issue -- a 702-type issue,
9 Daubert, and also the evidence upon which he relies. So,
10 specifically, he relies on Plaintiff's Exhibit 481 which is the
11 reported of Gene Deetz which was filed in redacted form in the
12 Golden Boy litigation.

13 As I previewed a little bit on Monday, Dr. Zimbalist
14 admitted in his deposition that he did absolutely nothing to
15 verify the figures that Golden Boy provided and that Gene Deetz
16 relied upon. And, in fact, plaintiffs did subpoena Golden Boy
17 for their data, and instead of using the data they received from
18 Golden Boy, Zimbalist said that he relied upon this declaration.

19 The issue here really is just that there is a lot of
20 case law. That that particular admission that Deetz -- that --
21 sorry -- that Zimbalist -- Dr. Zimbalist did absolutely nothing
22 to verify the accuracy of the information is not something that
23 an expert in the field can reasonably rely upon.

24 So that is our objection. That is the subject of our
25 Daubert, but it's also our objection to him using that exhibit,

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1 to using the data at all.

2 THE COURT: So I haven't looked at this briefing before
3 this afternoon. So help me understand, Ms. Grigsby, is there
4 any information that would indicate that this information is
5 inaccurate in any way?

6 MS. GRIGSBY: Yes, and that would be the data that
7 Golden Boy actually produced in this litigation.

8 THE COURT: So the data that Golden Boy actually
9 produced in the litigation is different than the data that's in
10 the report?

11 MS. GRIGSBY: Correct.

12 THE COURT: And so the idea is that the data is
13 different in the context of being inaccurate or is it just more
14 or is it just different types of data? So there's a difference
15 because people may provide more or less information or it's
16 different because what appears to be the same information is
17 reported differently. That obviously would be a concern to me.

18 But, again, I haven't looked -- I didn't look before
19 coming out this afternoon at that particular motion. So,
20 perhaps, you could just remind me what the nature of the
21 difference is.

22 MS. GRIGSBY: Right. Correct. It appears to be the
23 latter for the same time period. It is actually a different
24 percentage of wage share. And Dr. Zimbalist does give reasons
25 why he is relying on the Deetz report. However, he admits he

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1 didn't take any steps to independently verify the data in the
2 Deetz report. So basically he's saying, oh, this looks more
3 plausible to me, this redacted expert report in a different
4 case. I did nothing to verify it. And then, on the other hand,
5 plaintiffs obviously thought this information was relevant
6 because they subpoenaed Golden Boy to get it. And he's saying
7 I'm just throwing it away because I don't think that it looks
8 right.

9 But, I mean, it's a threshold thing that an expert
10 needs to independent -- take some steps to independently verify,
11 whether that is some kind of other checks, before an expert can
12 actually rely upon that data in forming their opinions. I mean,
13 experts can rely on hearsay. Experts can rely on other experts,
14 but they must take steps. They cannot just take something
15 without having any basis to independently verify that that
16 information is actually accurate.

17 And it appears that plaintiffs tried to do that by
18 subpoenaing Golden Boy, and when it didn't match up, they just
19 threw out what they got from the other promoter.

20 THE COURT: Okay. Mr. Silverman.

21 MR. SILVERMAN: Thank you, Your Honor. I have to admit
22 I wasn't prepared to argue this Daubert motion today, but I can
23 respond to some of this is Ms. Grigsby's points.

24 So there's two sets of data here. One that was
25 submitted by Golden Boy and one that was attached to -- to

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1 Professor or Dr. Deetz's report.

2 The -- both of them look pretty much the same, except
3 that the data attached to Mr. Deetz's report has much more
4 detailed, granular information of individual fighter
5 compensation and event revenues attached to it. Dr. Zimbalist
6 did add up all of those individual numbers and made sure they
7 added up to the total numbers. At the end of the day he's just
8 interested in the total annual revenue and annual fighter
9 compensation.

10 THE COURT: So you are saying he verified the
11 information he was going to use; he just didn't verify the other
12 information because he wasn't going to use it.

13 MR. SILVERMAN: Right. So what Ms. Grigsby is
14 referring to is that in his deposition they asked Dr. Zimbalist
15 what did you do to verify that this data was accurate. And he
16 said, well, you know, he's taking the data as it is. And then
17 in Dr. Blair's deposition Dr. Blair says we should use the data
18 that Golden Boy produced in response to a subpoena. And when we
19 asked him did you verify that data, of course he said no, too.
20 Because when someone produces data, unless you do a 30(b)(6)
21 deposition of them -- which wasn't done for hardly any of the
22 data that anyone's relying on in this. I don't think it was
23 done for any of the evidence that anyone is relying on in this
24 case, at least not that I'm aware of -- you have to take the
25 data as given.

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1 Now, Dr. Zimbalist looked at both of those sets of
2 data, and he determined that the data that Golden Boy produced
3 in response to the subpoena was not complete. So the wage share
4 is going to vary depending on if you have a subset of all of the
5 events for 2015 and 2016 or if you just look at some subset of
6 events. With certain types of boxers, depending on their
7 ranking, you're going to get a -- you're not going to get
8 necessarily the same wage share.

9 And so one of the things we looked at -- one of the
10 things that Dr. Zimbalist looked at and he will -- he can
11 explain this to you himself on Friday if you're interested, is
12 that -- is that if you look at just the amount of fighter
13 compensation -- of boxer compensation listed in 2016 in the data
14 that Golden Boy produced, it's less than the amount that a
15 single boxer who Golden Boy promoted in 2016 received according
16 to both public records and the individual line items attached to
17 the Deetz data. And, therefore, Dr. Zimbalist reasonably
18 decided that the data that was attached to the Deetz's report,
19 which again looks identical essentially, but with more detailed,
20 was more complete and accurate than the data that Golden Boy
21 produced in this case.

22 And I'd add one last thing, which is that the only
23 argument Zuffa really has here is that the data we should be
24 using is the data that Golden Boy produced in this case is just
25 that, that they produced it in this case. But there's no reason

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1 that a third party responding to a subpoena has to produce
2 complete and accurate data. And, in fact, I think it's more
3 likely that they would produce complete and accurate data in a
4 case in which they are a party than in which they're a nonparty.

5 THE COURT: So I want to make sure I am understanding,
6 Mr. Silverman. As it relates to the wage calculation, you're
7 saying that he verified that information that was received from
8 Golden Boy in terms of the total -- total amounts was the same
9 for both sets of data?

10 MR. SILVERMAN: He confirmed -- what he did is he
11 looked at the granular data that was -- so -- and the reason --
12 this is the reason we marked the -- marked this data as an
13 exhibit so that on Friday, if Your Honor was interested and if
14 Your Honor thought that this argument needed to be resolved in
15 order to resolve this motion, that you could see exactly what
16 this data looks like. And I don't have that available right
17 now, but we will have it available on Friday if you want to see
18 it.

19 And -- and what you'll see is that we have a high-level
20 table that says annual fighter expenses and total revenues,
21 event revenues, and a few -- along with a few other line items
22 that aren't relevant to us. And then behind that there's a list
23 of all of the fighter -- all of the events and the fighters and
24 their compensation and the revenue that was generated out of
25 that event. And what Dr. Zimbalist did is he added up all of

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1 the individual fighters and saw that that, in fact, added up to
2 the annual totals.

3 So that's one thing he did to verify. The other thing
4 he did was compare the overall wage share numbers that are
5 calculated from -- from this data to other boxing promoters
6 whose data he received at some point during discovery and saw
7 that those numbers lined up much more closely with the -- with
8 the wage shares that were calculated from the data attached to
9 the Deetz report as opposed to the data that was produced in
10 Golden Boy.

11 THE COURT: Well, and is his testimony focussed
12 primarily on Golden Boy or does it include other promoters, too?

13 MR. SILVERMAN: So he only used the Golden Boy data to
14 calculate the boxing wage share, but he verified that number by
15 -- he did -- he did manage to find data from other boxing
16 promoters which he can use to -- to assess whether that number
17 is generally representative of the -- of the sport as a whole.

18 THE COURT: Okay.

19 MS. GRIGSBY: Your Honor, I --

20 THE COURT: So, Ms. Grigsby, let me ask you this
21 question. When you're saying that he didn't verify the
22 information, you're not disputing that this information was --
23 both sets of information were provided by Golden Boy, right?

24 MS. GRIGSBY: So this is an --

25 THE COURT: That's a yes-or-no question.

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1 MS. GRIGSBY: So we are not disputing that Golden Boy's
2 expert put forth this report.

3 THE COURT: Right. So you're not disputing that the
4 information came from Golden Boy in both sets of data, right?

5 MS. GRIGSBY: We do not dispute that.

6 THE COURT: Okay. So the dispute that you're having is
7 you're saying that he should have been and when he received the
8 information -- and I want to be clear. That's why I'm asking
9 that, Ms. Grigsby. What is it that you're saying that should
10 have been done to verify information in the context of these two
11 sets of data if you're not disputing the fact that it was
12 provided by Golden Boy?

13 MS. GRIGSBY: So plaintiffs have said that there is no
14 way that they could have actually verified it. That is untrue.
15 They actually had a subpoena for deposition testimony to Golden
16 Boy, and they chose not to pursue that. I think it's very
17 important to look at what the redacted Deetz report actually
18 looks like because plaintiffs are now representing that it is
19 something it is not. So like, for example, if you look at --

20 THE COURT: Okay. So back up for a second.

21 MS. GRIGSBY: Yes.

22 THE COURT: Are you saying that it's unverified because
23 what they should have done after they produced it -- and I'm
24 saying "they," plaintiffs -- is they should have had a 30(b)(6)
25 deponent come in and say this is the data that we actually

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1 produced?

2 MS. GRIGSBY: No. They had received data in this
3 litigation. Their expert did not use that data. If plaintiffs
4 believed there was an issue with the data and it did not
5 accurately reflect wage share as plaintiffs are trying to define
6 it, they should have pursued that deposition to determine why
7 there is some kind of a disconnect between what Dr. Deetz is
8 performing and how Dr. -- and what the actual data is that they
9 received from this promoter.

10 THE COURT: So, in other words -- hold on just a
11 moment. So, in other words, you're not -- you're not talking
12 about verification of the data from the standpoint it didn't
13 come from Golden Boy. You're saying it did come from Golden
14 Boy. You're not saying that somehow there's a distortion in
15 this production. What you're saying is that to the extent that
16 there was a discrepancy between the data, that made the data
17 suspect and, therefore, they had an obligation to verify what
18 the discrepancy was before Dr. Zimbalist replied upon it.

19 MS. GRIGSBY: So I think even using data is very
20 liberal. So, for example, if you look at page 44 of Exhibit
21 481, which is the analysis of revenue expenses as an
22 event-by-event boxer-by-boxer basis, it is a black box. It was
23 redacted.

24 THE COURT: Okay. But, Ms. Grigsby, I want you to try
25 to --

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1 MR. SILVERMAN: Can I respond?

2 THE COURT: No, because I don't want to go back and
3 forth.

4 MS. GRIGSBY: Sure.

5 THE COURT: I want to make sure, Ms. Grigsby, is --
6 your argument seems to be that there were discrepancies or there
7 were omissions in the data that should have been verified, and
8 absent their verification, that creates ambiguity about the
9 validity of the data and where it comes from. Is that right?

10 MS. GRIGSBY: No, my argument is that an expert needs
11 to actually verify the information that that expert is using.
12 So that is --

13 THE COURT: But the -- but the data came from Golden
14 Boy. It was a subpoena. They've produced it in response to the
15 subpoena.

16 MS. GRIGSBY: No.

17 THE COURT: So I don't understand. If -- if the issue
18 is the data that's in the Deetz report, if I understand you
19 correctly, is it that you're saying that what -- what the expert
20 should have done was checked to see what information Dr. Deetz
21 actually used to run these regressions? Because I'm not sure
22 when you say they didn't verify it what it is that they should
23 have actually done.

24 MS. GRIGSBY: So, I'm sorry, I might not be precise.
25 So they got the Deetz report off of Pacer; not in response to

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1 any subpoena. So, yes, our argument is that if they were going
2 to use something that came off of Pacer, which is hearsay -- and
3 an expert report is not necessarily data. It's not necessarily
4 evidence. We don't know if the expert made, like, mathematical
5 errors. We don't know what Gene Deetz did. We do not know
6 whether this expert is actually even accurately reporting what
7 Golden Boy gave to him.

8 This is not raw data from Golden Boy. This is
9 Dr. Deetz's interpretation of what he received from Golden Boy.

10 And, yes, in that circumstance an expert has an
11 obligation to do some kind of check to actually make sure that
12 Gene Deetz wasn't, like, leaving out rows from what he received
13 from Golden Boy. We have no way of actually checking that.

14 And Dr. Zimbalist --

15 THE COURT: So let me ask you a question. So you're
16 saying that they could potentially, because you both have done
17 this, used publicly-available data, but you just couldn't use
18 it -- the expert couldn't use it to rely upon it to run his or
19 her own calculations?

20 Because both Dr. Topel and Dr. Singer actually relied
21 upon in their reports published reports about data that they
22 used to make arguments. And so the idea that you can't use
23 public data to make an argument is one thing. So I'm trying to
24 understand. You can certainly do that. If you're saying he
25 then ran a regression or did another analysis dazed upon that

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1 data and he shouldn't do that, that's a separate argument. But
2 you're not I don't think arguing that they can't or he can't
3 make an argument based upon what Golden Boy itself produced, are
4 you?

5 MS. GRIGSBY: No, no, no. Your Honor, the argument I'm
6 making is that you can use it -- say it was on Golden Boy's
7 website and it's publicly available. Then we don't dispute that
8 if Golden Boy is putting out to the world that this is the
9 percentage that they're paying their boxers, that would be
10 valid. We are not disputing that. The difference is whether it
11 is valid for plaintiffs to go to NBC.com, pull things from a
12 website, and decide that -- with their expert without doing any
13 verification -- without having any checks and decide, okay, I'm
14 going to use that when I actually have data from the promoter
15 itself.

16 I mean, I think it's much more analogous to someone
17 going on a website, you know, ESPN, in order to get primary data
18 as opposed to going to NFL.com to get NFL data.

19 THE COURT: So you're saying -- and I'll go back and
20 look at this -- that Dr. or Professor Zimbalist used this data
21 to run his own analyses, expert analyses, and the data wasn't
22 reliable because it was produced in this litigation and not --
23 excuse me -- verified as relates to that.

24 MS. GRIGSBY: So when you say this data was produced in
25 this litigation, we're talking about presumably different data

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1 because the percentages are different. So Dr. Zimbalist took
2 somebody else's expert report and then decided based on someone
3 else's expert report that was filed in redacted form that he
4 would use that data.

5 What we're saying is plaintiffs have actually
6 subpoenaed -- they had all of the discovery mechanisms at their
7 disposal, and they used them. They subpoenaed Golden Boy for
8 the data. They actually noticed a deposition and chose not to
9 pursue it, and the reason is because the number would be lower
10 based on what they got.

11 So instead of using the discovery mechanisms at their
12 disposal, they had their expert rely on an expert report, which
13 is hearsay, in separate litigation and that expert testified
14 that he did nothing to verify the accuracy of that data. We do
15 not know --

16 THE COURT: So why don't we do this because we're going
17 to go back and forth, and I want to avoid that. So what I want
18 to do is I'm going to go back and look at the motion again and
19 then have you all argue it and then decide how much I would
20 limit or not Dr. Zimbalist's testimony; because it may very well
21 be that the part of the report or his testimony that you find
22 objectionable is not a part that I really need.

23 So before we go down this path, I may in looking at the
24 report again and looking at the motion decide, you know what, I
25 don't know that I need that. And in fact, you know, there's

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1 certainly other -- well, I don't know that I'm going to need it.
2 So why don't we wait before we go down that path, but also that
3 way I can also take a look at the motions and the data again
4 because I think it will be helpful given, Ms. Grigsby, given the
5 specific arguments you're making for me to go back and review
6 that before. And I'll do that and we'll do that at the
7 beginning of Dr. Zimbalist's testimony on Friday.

8 MS. GRIGSBY: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. SILVERMAN: Thank you.

11 MS. GRIGSBY: And one further issue on Mr. Silva since
12 you have noted that you do want to hear his testimony soon. I
13 was just wondering if we could have a sidebar.

14 THE COURT: Yes. Of course.

15 MS. GRIGSBY: Thank you, Your Honor.

16 (Whereupon sidebar conference was reported, but not
17 transcribed.)

18 THE COURT: All right. Is there anything else then
19 that we need to do, Mr. Isaacson?

20 MR. ISAACSON: So you asked us, the two sides, last
21 night to exchange any questions we had about sources of what the
22 witness said in the expert reports, and both sides did that and
23 have responded to that. There's on our side one issue as to
24 disclosure. The -- we e-mailed them last night and there was
25 several questions, but there's only one question at issue.

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1 Dr. Singer testified that his regressions are not
2 sensitive to weighting. You remember he did that again today.
3 And we said please identify any backup materials you previously
4 provided of any impact regression in support of common impact
5 that's unweighted.

6 The response we got, which I can hand up to you, says:
7 In response to part B of Zuffa's request, which is what I just
8 read, plaintiff responds as follows.

9 (Counsel conferring.)

10 MR. ISAACSON: The robustness checks are performed
11 using the data.do file, and then there's a long file name which
12 was produced as backup to SR1. Included in the data set used by
13 the file are regenerated variables with the alternative
14 weighting methods. To perform the robustness checks, the
15 variables in lines 119 through 135 which inform the foreclosure
16 share can be toggled for other weights. For example, to switch
17 the model from revenue weights to unweighted in the tracked
18 market, change the variable, and then there's a long variable
19 name to another long variable name. The code will output the
20 model results to the specified output folder in the code.

21 Now what's evident to the -- to that response is that
22 we would have to go do this check, toggle, check the variables,
23 and run the code. And that this was not in his report.

24 MR. CRAMER: Your Honor, we --

25 THE COURT: Well, no, no. I think what the report is

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1 saying is that it runs it as part of the report. So that the
2 software when they run the robustness check runs the analysis
3 and it does that. That's what I understand that to be saying;
4 not that it -- the robustness test or a robustness check doesn't
5 necessarily have to include them providing a full table with all
6 of the coefficients for each of those checks. There can be, as
7 I understood it from both Dr. Topel and Dr. Singer, a separate
8 robustness check that they can do in the software. And that's
9 what that references.

10 MR. ISAACSON: So I disagree, Your Honor, because
11 unless they have run it and disclosed it, we don't know that
12 they've run it. So it would be similar -- I mean, we would not
13 stand --

14 THE COURT: I'll disagree with that. I will take a
15 look at that if you want to send that to me, but my -- my
16 finding as relates to the testimony is that the robustness
17 checks that were done as part of running the analysis -- that
18 when they run the regression, there are a series of other tests
19 that are run as it relates to the validity of the variables.
20 Hence, Dr. Topel saying when you run the regression at some
21 point it may kick out certain variables.

22 So that is also something that would run along with the
23 regression. And so I understood both Dr. Topel and Dr. Singer
24 to be saying that when they run these regressions there -- there
25 are accompanying tests that are run to verify the validity of

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1 the variables, and that that's what that represents.

2 So I don't think that that's anything different than
3 what's been provided.

4 MR. ISAACSON: All right. We would have no way of
5 knowing the tests that they've run if they haven't been
6 disclosed --

7 THE COURT: Okay. But --

8 MR. ISAACSON: -- in the backup.

9 THE COURT: Yes, you would because that's what I
10 understand that to mean in terms of what happened. And even if
11 he referenced it, which he did, right, Dr. Topel would also know
12 what that means, right, and certainly could have run a test on
13 that data and didn't.

14 So I'm not going to require them to produce anything
15 more than what that is. That's how I understand that.

16 MR. ISAACSON: I'm not asking for more production.
17 What I'm saying is there was testimony that was given based
18 on -- believe me, I don't want more production --

19 THE COURT: Yeah.

20 MR. ISAACSON: -- on this. That there was testimony
21 given on checks that were run and were not disclosed in the
22 backup data.

23 THE COURT: Right. So what I'm saying is I disagree
24 with that finding. I find that what he's talking about is what
25 this is consistent with. So I appreciate that, but I am going

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1 to find something different. Thank you.

2 MR. CRAMER: Thank you, Your Honor.

3 THE COURT: All right. So I will see you all back
4 here -- let's try to be in here, for counsel at least, by 8 and
5 we'll start at 8:30. And you're going to need to clear a little
6 space because I have another matter right now that's going to
7 come on. We'll be adjourned. I'll be back in just a few
8 minutes for the next case.

9 (Whereupon the proceedings concluded at 3:04 p.m.)

10 --oOo--

11 COURT REPORTER'S CERTIFICATE

12
13 I, PATRICIA L. GANCI, Official Court Reporter, United
14 States District Court, District of Nevada, Las Vegas, Nevada,
15 certify that the foregoing is a correct transcript from the
16 record of proceedings in the above-entitled matter.

17

18 Date: August 28, 2019.

19 /s/ **Patricia L. Ganci**

20 Patricia L. Ganci, RMR, CRR

21 CCR #937

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